

No. 19-16636

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Monsanto Company,
Defendant/Appellant,

v.

Edwin Hardeman,
Plaintiff/Appellee.

Appeal from the United States District Court
for the Northern District of California
Nos. 3:16-cv-00525 (Hon. Vince Chhabria)

UNITED STATES SUPPLEMENTAL EXCERPTS OF RECORD

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PRETRIAL ORDER NO. 116: ORDER RE DESIGN DEFECT CLAIM. March
18, 2019, Case No. 3:16-cv-525, Dkt. 214Supp. ER0001

Trial Transcript – March 27, 2019, Case No. 16-cv-00525, Dkt. 293
.....Supp. ER0003

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: ROUNDUP PRODUCTS LIABILITY LITIGATION	MDL No. 2741 Case No. 16-md-02741-VC
This document relates to: <i>Hardeman v. Monsanto</i> , 3:16-cv-00525-VC	PRETRIAL ORDER NO. 116: ORDER RE DESIGN DEFECT CLAIM

Under California law, there are two alternative theories of liability for design defects: the consumer expectations test and the risk-benefit test. If a plaintiff is unable to prevail under the consumer expectations test, they may nonetheless prevail under the risk-benefit test. *See, e.g., McCabe v. Am. Honda Motor Co.*, 100 Cal. App. 4th 1111, 1121 (2002).

Here, it appears that Hardeman does not wish to proceed under the risk-benefit theory. Accordingly, subject to the two caveats discussed below, per Hardeman's request the jury will only be instructed on the consumer expectations theory. Monsanto contends that under *Trejo v. Johnson & Johnson*, 13 Cal. App. 5th 110, 156-60 (2017), the jury should be given only the risk-benefit instruction, but that case is distinguishable. *Trejo* involved a risk that a pharmaceutical product posed to a small subset of users, which is different from a risk that a home-use pesticide may have posed to all users. *See Arnold v. The Dow Chem. Co.*, 91 Cal. App. 4th 698, 727 (2001) (categorizing a pesticide as a product that is “within the ordinary experience and understanding of a consumer”).

The first caveat is that Hardeman's attorneys have had a difficult time explaining their theory of design defect liability. At times they have asserted that Roundup is defective in the

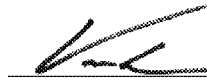
sense that it is simply unsafe for residential use – an argument that appears consistent with the consumer expectations theory. At other times they have asserted that the product could be formulated in a safer way (either the way it is allegedly formulated in Europe or using pure glyphosate). This argument seems more consistent with the risk-benefit theory. The Court assumes that, if the jury is only given the consumer expectations instruction, Hardeman's only design defect theory will be that Roundup is simply unsafe for residential use.

The second caveat is that the precise language of the jury instruction on the consumer expectation test remains to be crafted. When finalizing this instruction, the parties will need to consider whether a verdict for Monsanto on the failure to warn claim and a verdict for Hardeman on the design defect claim (as described in this order) would be inconsistent. It also seems possible that the failure to warn claim (to the extent it focuses on the failure to instruct people to use protective equipment) could be inconsistent with the design defect theory (as described in this order).

It is with these caveats that the Court rules that the consumer expectations instruction will be given and the risk-benefit instruction will not be given. If the Court has misunderstood the various statements by Hardeman's lawyers about the design defect theory they intend to present to the jury, Hardeman's lawyers must inform the Court in a filing before opening statements, and in any event by no later than 5:00 p.m. today.

IT IS SO ORDERED.

Date: March 18, 2019



Honorable Vince Chhabria
United States District Court

Volume 20

Pages 2683 - 2805

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Vince Chhabria, Judge

EDWARD HARDEMAN,

Plaintiff,

VS.

MONSANTO COMPANY,

Defendant.

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NO. C 16-00525 VC

San Francisco, California

Tuesday, March 26, 2019

TRANSCRIPT OF PROCEEDINGS

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I N D E X

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Tuesday - March 26, 2019

8:03 a.m.

P R O C E E D I N G S

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(Proceedings were heard out of presence of the jury:)

THE COURT: Good morning. I have -- on the jury instructions, the two changes that I made from last night in response to your filings from last night were calling it non-Hodgkin's lymphoma in the first instruction.

MS. MOORE: Thank you, Your Honor.

THE COURT: And second was on the damages instruction, we made both changes that were suggested. The Plaintiffs suggested a change; Monsanto suggested a change, and we made both of those changes.

MS. MOORE: Okay. Thank you, Your Honor.

THE COURT: We kept the amount on the verdict form. I don't think it is suggestive. I think the instructions are very clear. I think it will be very clear from the argument, and I don't want to run the risk of creating any problems with this trial that are -- that we could otherwise avoid. So those are the changes that were made.

The rest of the objections were -- you know, I disagreed with. So those will be the final instructions. We will file a final version of the instructions shortly.

MS. MOORE: So the verdict form is the same as what we had yesterday?

1 **THE COURT:** There is one minor change to the verdict
2 form?

3 **THE CLERK:** Yes. So the way that it worked out when
4 it was printed, it was two pages. And then this little
5 instruction at the top of page Number 2 it says "all of the
6 above" if you answered no. We changed it to "If you answered
7 no to 1 through 3."

8 **MS. MOORE:** Oh, that makes sense, yeah.

9 **THE COURT:** Okay. So I have been through the
10 Plaintiff's slides. I will go through Monsanto's slides
11 shortly.

12 I only had one fairly minor concern about the Plaintiff's
13 slides, and that was the use of the 1.5 billion R&D figure. I
14 know that testimony came in --

15 **MS. MOORE:** It did.

16 **THE COURT:** -- on that. I guess there were two -- two
17 issues.

18 Again, I think these are pretty minor, but one issue is
19 that you -- at a couple -- on a couple different slides you
20 refer to it as a \$1.5 billion annual budget, and my vague
21 recollection of the testimony was -- and how it came in was
22 that you were talking about one particular year. But I -- I
23 may be misremembering that.

24 **MS. MOORE:** I don't think so, Your Honor, but I will
25 find that.

1 **THE COURT:** But the other question is, you know, we
2 went through and discussed the numbers -- I can't remember
3 where we left our discussion about all the numbers and how they
4 would be used for -- as they relate to punitive damages, and
5 you ended up -- you know, you ended up stipulating to certain
6 numbers.

7 **MS. MOORE:** Right.

8 **THE COURT:** You got this \$1.5 billion number
9 through -- in through the testimony of -- was it Grant?

10 **MS. MOORE:** I believe so, Your Honor.

11 **THE COURT:** And then so the question is having gotten
12 that number in, can you use that number in your punitive
13 damages argument? Maybe it's -- I think probably it's okay,
14 but I just wanted to make sure that I wasn't misremembering any
15 aspect of our discussion about the numbers from a week or so
16 ago.

17 **MS. MOORE:** I mean, it's in evidence, Your Honor. So
18 I would think I could use it.

19 **MR. STEKLOFF:** I would agree that it is in evidence,
20 Your Honor, but I think one of the issues is that that 1.5
21 research and development goes to a much broader scope of
22 things. It goes to agricultural science and trying to develop
23 agricultural science and improve agricultural science and
24 products that have nothing to do with Roundup. Some may and
25 some may not.

1 So I think then to argue where we have been precluded -- I
2 mean, we have been precluded from presenting the agricultural
3 benefits story. I think to then use that as something to tee
4 off of for punitive damages seems both unnecessary, given the
5 other numbers they have, but also I think a little misleading
6 and an incomplete story because we haven't been able to present
7 why that number is so large, how it is being used, how it is
8 being used appropriately, and how the company is advancing
9 agricultural science.

10 **MS. MOORE:** I mean, he can make an argument about
11 that. I mean, the point is that that is their research and
12 development budget; and then they choose to spend the money
13 however they want, but what we know is they didn't choose to
14 spend it on testing Roundup. That's where I'm going.

15 **THE COURT:** I think it is permissible. The only
16 question I have is just when you say 1.5 billion annually, is
17 that consistent with how the testimony came in or was he
18 talking about a particular year?

19 **MS. MOORE:** I will check that, Your Honor. I think it
20 was just in general, but I am going to double-check that.

21 **THE COURT:** Okay. So that's all I had.

22 Does anybody else have anything?

23 **MS. MOORE:** I think Ms. Wagstaff does, Your Honor.
24 Just a second.

25 **MS. WAGSTAFF:** Your Honor, just one small thing.

1 Last night when we were cutting that video for
2 Dr. Portier, we were watching it. It is about a minute and a
3 half to two minutes. And it became clear to us, and we would
4 just ask you to reconsider allowing that. The testimony --
5 basically what happens is they had him -- they ask him if he is
6 aware of a letter. He says, No, I'm not aware of this letter.
7 They hand him a letter, and then the attorney reads something
8 and says, Did I read that correctly; and that's the end of it.

9 So it is basically an attorney testifying to something
10 that our expert doesn't even know about. We think it is the
11 wrong way to get this information in.

12 **THE COURT:** So you want the letter to come in?

13 **MS. WAGSTAFF:** No, we don't want the letter to come
14 in. We want them to bring a witness if they want to present
15 testimony on this.

16 **THE COURT:** Okay. My ruling stands.

17 **MS. WAGSTAFF:** Thank you, Your Honor.

18 **THE COURT:** Okay. Anything else?

19 **MR. STEKLOFF:** Not from the Defense.

20 **THE COURT:** Okay. So let me go back -- I will go back
21 and review the Monsanto slides. We will file the final jury
22 instructions, and we will see you out here at 8:30.

23 Nobody had a problem with the way I'm planning on reading
24 the instructions to the jury?

25 **MR. STEKLOFF:** We did not, Your Honor.

1 **THE COURT:** Okay.

2 **MS. MOORE:** That's fine, Your Honor. Sorry.

3 **THE COURT:** Okay.

4 **THE CLERK:** Court is in recess.

5 (Recess taken at 8:15 a.m.)

6 (Proceedings resumed at 8:32 a.m.)

7 (Proceedings were heard out of presence of the jury:)

8 **THE COURT:** Go ahead and bring in the jury.

9 I forgot one very minor thing on your slides.

10 **MR. STEKLOFF:** Yes, Your Honor.

11 **THE COURT:** Which is Slide Number -- I think it is
12 Number 27 or it might be 39 -- I can't remember. I wrote both
13 numbers down, but I only had an issue with one of them. The
14 EPA letter -- you put a picture of the EPA letter on the slide
15 that is not coming in, so I think the quote is okay but
16 probably not the picture of the EPA letter. It is a minor
17 thing.

18 **MR. STEKLOFF:** Oh, in the background?

19 **THE COURT:** Yeah.

20 **MR. STEKLOFF:** So we can just delete the page from the
21 background.

22 **THE COURT:** Yeah. Sorry about that.

23 Go ahead. Bring them in.

24 (Proceedings were heard in the presence of the jury:)

25 **THE COURT:** Okay. Welcome. Thank you for arriving on

1 time again. We are ready to -- we are ready to proceed.

2 Oh, there is going to be a little bit more evidence
3 presented to you, and then we will proceed with the Plaintiff's
4 closing argument. And then there will be a little break, and
5 then Monsanto's closing argument, and then rebuttal from the
6 Plaintiff and then the case will be yours.

7 So no more witnesses from the Plaintiff; is that correct?

8 **MS. WAGSTAFF:** Your Honor, Mr. Hardeman rests.

9 **THE COURT:** Okay.

10 **MR. STEKLOFF:** We preserve our motion. And we recall
11 Dr. Portier for a very brief clip.

12 **THE COURT:** Okay. Go ahead.

13 (Video was played but not reported.)

14 **THE COURT:** Okay. Anything further from Monsanto?

15 **MR. STEKLOFF:** No, Your Honor. Monsanto rests.

16 **THE COURT:** Nothing further from the Plaintiff?

17 **MS. WAGSTAFF:** No rebuttal, Your Honor.

18 **FINAL JURY INSTRUCTIONS**

19 **THE COURT:** Okay. So now we are ready for closing
20 arguments. I will first read you the instructions for
21 Phase Two. And as with Phase One, you will each have a copy
22 set of these instructions back in the room with you; but I will
23 read them to you to help shed light on the closing arguments
24 that you will hear.

25 In the first phase of the trial you determined that

1 Roundup was a substantial factor in causing Mr. Hardeman's
2 non-Hodgkin's lymphoma. You are now being asked to determine
3 whether Monsanto is legally responsible for the harm caused to
4 Mr. Hardeman by Roundup; and if so, what damages should be
5 awarded.

6 Specifically, Mr. Hardeman has three substantive claims.
7 He claims, number one, that Roundup's design was defective;
8 number two, that Roundup lacked sufficient warning of potential
9 risks; and number three, that Monsanto was negligent by not
10 using reasonable care to warn about the risks posed by Roundup.

11 Mr. Hardeman has the burden of proving his claims. And
12 Monsanto denies the claims.

13 It is your duty to find the facts from all the evidence in
14 this case. You may consider the evidence from both phases in
15 deciding the claims in Phase -- and deciding the facts in
16 Phase Two. To those facts, you will apply the law as I give it
17 to you. You must follow the law as I give it to you -- whether
18 you agree with it or not -- and you must not be influenced by
19 any personal likes or dislikes, opinions, prejudices or
20 sympathies. You will recall that you took an oath to do so.

21 You must follow all of these instructions and not single
22 out some and ignore others. They are all important. Please do
23 not read into these instructions or anything that I may say or
24 do or may have said or done as suggesting that I have an
25 opinion regarding the evidence or what your verdict should be.

1 Now, it is true that all of the instructions are equally
2 important, but a number of these instructions I have already
3 read to you once; and you have already considered them and read
4 them back in the jury room during your deliberations during
5 Phase One, so I'm not going to read some of these entire
6 instructions again. I'm just going to remind you that they are
7 there, and the full instructions will be there in writing back
8 in the jury room.

9 For example, I gave you an instruction about what is
10 evidence. That will apply -- that still applies, of course in
11 Phase Two.

12 I gave you an instruction about what is not evidence. The
13 highlight from that instruction is that lawyer statements and
14 questions and arguments are not evidence, and you will have
15 that instruction back there.

16 Direct and circumstantial evidence, I gave you an
17 instruction about that. You may remember long ago I gave you
18 the example of raining at night, and if you -- how you -- if
19 you actually see it raining or hear it raining, that is direct
20 evidence that it rained at night. If you see the ground wet
21 when you wake up the next morning, that is circumstantial
22 evidence that it rained. You will have that instruction.

23 Requests for admission. Evidence was presented to you in
24 the form of admissions to the truth of certain facts. These
25 admissions were given in writing before trial in response to

1 requests that were submitted under established court
2 procedures. You must treat these facts as having been proved.

3 I gave you the instruction, and you will have the
4 instruction, on fair treatment for corporations and
5 partnerships.

6 There is an instruction that applies, again, on
7 credibility of witnesses.

8 There is an instruction, again, on expert opinions that
9 applies.

10 Burden of proof. I will read that to you again. So this
11 is the preponderance of the evidence burden of proof that you
12 are familiar with. With the exception of punitive damages,
13 Mr. Hardeman has -- Mr. Hardeman's burden of proof for all his
14 claims is called a preponderance of the evidence. When a party
15 has the burden of proving a claim by a preponderance of the
16 evidence, it means you must be persuaded by the evidence that
17 the claim is more probably true than not true. Mr. Hardeman
18 has a higher burden of proof for his punitive damages claim,
19 which I will discuss with you later.

20 Okay. Now, onto the three substantive legal claims that
21 Mr. Hardeman is making. First is the design defect claim. To
22 establish his design defect claim, Mr. Hardeman must prove all
23 of the following:

24 One, that Monsanto manufactured, distributed or sold
25 Roundup; two, that Roundup in the context of the facts and

1 circumstances of this particular case is a product about which
2 an ordinary consumer can form reasonable minimum safety
3 expectations; three, that the Roundup used by Mr. Hardeman did
4 not perform as safely as an ordinary consumer would have
5 expected it to perform when used or misused in an intended or
6 reasonably foreseeable way; four, that Roundup's failure to
7 perform safely was a substantial factor in causing
8 Mr. Hardeman's harm.

9 Second, failure to warn, strict liability. Mr. Hardeman
10 also claims that Roundup lacked sufficient warnings of the risk
11 of NHL. To establish this strict liability failure-to-warn
12 claim, Mr. Hardeman must prove all of the following: One --
13 and there are six things -- one, that Monsanto manufactured,
14 distributed or sold Roundup; two, that Roundup's NHL risk was
15 known or knowable in light of the scientific and medical
16 knowledge that was generally accepted in the scientific
17 community at the time that Mr. Hardeman was using Roundup;
18 three, the risk of NHL -- that the risk of NHL presented a
19 substantial danger when Roundup was used or misused in an
20 intended or reasonably foreseeable way and that is a
21 substantial danger of NHL; four, that ordinary consumers would
22 not have recognized the risk of NHL; five, that Monsanto failed
23 to adequately warn of the risk of NHL; and six, that Monsanto's
24 failure to warn about the risk of NHL was a substantial factor
25 in causing Mr. Hardeman's harm.

1 And then third, the negligence claim which also relates to
2 failure to warn. Mr. Hardeman also claims that Monsanto was
3 negligent by not using reasonable care to warn about Roundup's
4 NHL risk. To establish this claim, Mr. Hardeman must prove all
5 of the following. And, again, there are six elements: One,
6 that Monsanto manufactured, distributed or sold Roundup; two,
7 that Monsanto knew or reasonably should have known that Roundup
8 posed a risk of NHL when used or misused in a reasonably
9 foreseeable manner; three, that Monsanto knew or reasonably
10 should have known that users would not realize the risk of NHL;
11 four, that Monsanto failed to adequately warn of the risk;
12 five, that a reasonable manufacturer, distributor or seller
13 under the same or similar circumstances would have warned of
14 the risk; and six, that Monsanto's failure to warn about the
15 risk of NHL was a substantial factor in causing Mr. Hardeman's
16 harm.

17 You have an instruction about the EPA, European regulators
18 and IARC. In Phase One you were instructed not to substitute
19 the judgment of the EPA, various European regulatory bodies or
20 the International Agency for Research of Cancer, or IARC, for
21 your own independent assessment of the evidence. That remains
22 true in Phase Two. However, the conclusions of these entities
23 are relevant to the issues you are considering in Phase Two.

24 Now, moving onto damages. There are two types of damages
25 being sought in this case: Compensatory damages and punitive

1 damages. And now I will instruct you on compensatory damages.

2 If you decide that Monsanto is legally responsible for the
3 harm Roundup caused Mr. Hardeman, you must decide how much
4 money will reasonably compensate him for that harm. This
5 compensation is called "compensatory damages."

6 Mr. Hardeman seeks damages from Monsanto under more than
7 one legal theory. However, each item of damages may be awarded
8 only once, regardless of the number of legal theories allowed
9 and presented to you. The compensatory damages claimed by
10 Mr. Hardeman for the harm caused by Monsanto fall into two
11 categories called economic damages and noneconomic damages.

12 If you find for Mr. Hardeman, the parties have stipulated
13 that the amount of economic damages is \$200,967.10. You will
14 be asked to determine what amount of noneconomic damages should
15 be awarded. The amount of damages must include an award for
16 each item of harm that was caused by Monsanto's wrongful
17 conduct, even if the particular harm could not have been
18 anticipated.

19 Mr. Hardeman does not have to prove the exact amount of
20 damages that will provide reasonable compensation for the harm.
21 However, you must not speculate or guess in awarding damages.

22 The following are specific items of noneconomic damages
23 claimed by Mr. Hardeman: Physical pain, mental suffering, loss
24 of enjoyment of life, physical impairment, inconvenience,
25 grief, anxiety, humiliation and emotional distress. No fixed

1 standard exists for deciding the amount of these noneconomic
2 damages. You must use your judgment to decide a reasonable
3 amount based on the evidence and on your common sense.

4 To recover for future mental suffering, loss of enjoyment
5 of life, inconvenience, grief, anxiety, humiliation and
6 emotional distress, Mr. Hardeman must prove that he is
7 reasonably certain to suffer that harm. For future noneconomic
8 damages, determine the amount in current dollars paid at the
9 time of judgment that will compensate Mr. Hardeman for these
10 future noneconomic damages.

11 So that's compensatory damages, and now we are turning to
12 punitive damages. As I mentioned, there is a higher standard
13 of proof for punitive damages. So I will first instruct you on
14 that standard of proof; that is the clear and convincing
15 standard.

16 Mr. Hardeman must prove punitive damages by clear and
17 convincing evidence, which is a higher burden of proof than the
18 preponderance of the evidence standard. Under the clear and
19 convincing evidence standard, a party attempting to prove a
20 fact must persuade you that it is highly probable that the fact
21 is true.

22 So now punitive damages. If you decide that Monsanto is
23 legally liable for the harm that Roundup caused Mr. Hardeman,
24 you must then decide whether Monsanto's conduct justifies an
25 award of punitive damages. The purposes of punitive damages

1 are to punish a wrongdoer for the conduct that harmed the
2 Plaintiff and to discourage similar conduct in the future. You
3 may award punitive damages against Monsanto only if
4 Mr. Hardeman proves that Monsanto engaged in conduct with
5 malice or oppression.

6 To do this, Mr. Hardeman must prove one of the following
7 by clear and convincing evidence: One, that the conduct
8 constituting malice or oppression was committed by one or more
9 officers, directors or managing agents of Monsanto who acted on
10 behalf of Monsanto; or two, that the conduct constituting
11 malice or oppression was authorized by one or more officers,
12 directors or managing agents of Monsanto; or three, that one or
13 more officers, directors or managing agents of Monsanto knew of
14 the conduct constituting malice or oppression and adopted or
15 approved that conduct after it occurred.

16 Malice means that Monsanto acted with intent to cause
17 injury or that Monsanto's conduct was despicable and was done
18 with a willful and knowing disregard of the rights or safety of
19 another.

20 A person acts with knowing disregard when he or she is
21 aware of the probable consequences of his or her conduct and
22 deliberately fails to avoid those consequences.

23 Oppression means that Monsanto's conduct was despicable
24 and subjected Mr. Hardeman to cruel and unjust hardship in
25 knowing disregard of his rights.

1 Despicable conduct is conduct that is so vile based on
2 contemptible that it would be looked down on or despised by
3 reasonable people.

4 An employee is a managing agent if he or she exercises
5 substantial independent authority and judgment in his or her
6 corporate decision-making, such that his or her decisions
7 ultimately determine corporate policy.

8 There is no fixed formula for determining the amount of
9 punitive damages. And you are not required to award any
10 punitive damages.

11 If you decide to award punitive damages, you should
12 consider all of the following factors in determining the
13 amount: A, how reprehensible was Monsanto's conduct. In
14 deciding how reprehensible Monsanto's conduct was, you may
15 consider, among other factors, whether the conduct caused
16 physical harm, whether Monsanto disregarded the health or
17 safety of others, whether Mr. Hardeman was financially weak or
18 vulnerable and Monsanto knew that Mr. Hardeman was financially
19 weak or vulnerable and took advantage of him, whether
20 Monsanto's conduct involved a pattern or practice, and whether
21 Monsanto acted with trickery or deceit.

22 B, is there a reasonable relationship between the amount
23 of punitive damages and Mr. Hardeman's harm or between the
24 amount of punitive damages and potential harm to Mr. Hardeman
25 that Monsanto knew was likely to occur because of its conduct.

1 C, in view of Monsanto's financial condition, what amount
2 is necessary to punish it and discourage future wrongful
3 conduct.

4 You may not increase the punitive damage award above the
5 amount that is otherwise appropriate merely because Monsanto
6 has substantial financial resources.

7 When deciding whether to award punitive damages, you
8 should only consider Monsanto's conduct through summer 2012,
9 which is when Mr. Hardeman stopped using Roundup. However, any
10 evidence you heard -- any evidence you may have heard regarding
11 events that occurred after 2012 can be considered in
12 determining the amount of punitive damages.

13 Punitive damages are not intended to compensate
14 Mr. Hardeman. If you awarded compensatory damages to
15 Mr. Hardeman, your award will have fully compensated him for
16 any loss, harm or damage that he has incurred or may in the
17 future incur as a result of Monsanto's conduct.

18 Accordingly, you must not include in an award of punitive
19 damages any amount intended as compensation for loss, harm or
20 damage that Mr. Hardeman has incurred or may incur. In
21 addition, punitive damages may not be used to punish Monsanto
22 for the impact of its alleged misconduct on people other than
23 Mr. Hardeman.

24 In determining the amount of punitive damages, if any, you
25 should take into consideration any mitigating evidence.

1 Mitigating evidence is evidence that may demonstrate that there
2 is no need for punitive damages or that a reduced amount of
3 punitive damages should be imposed against Monsanto.

4 This next instruction I gave you at Phase One, but I will
5 give it to you again.

6 Before you begin your deliberations, elect one member of
7 the jury as your presiding juror. If you want the past
8 election to control, that's fine too. The presiding juror will
9 preside over the deliberations and serve as the spokesperson
10 for the jury in court.

11 You must diligently strive to reach agreement with all of
12 the other jurors, if you can do so. Your verdict must be
13 unanimous.

14 Each of you must decide the case for yourself, but you
15 should do so only after you have considered all of the
16 evidence, discussed it fully with the other jurors and listened
17 to their views. It is important that you attempt to reach a
18 unanimous verdict, but, of course, only if each of you can do
19 so after having made your own conscientious decision.

20 Do not be unwilling to change your opinion if the
21 discussion persuades you that you should, but do not come to a
22 decision simply because other jurors think it is right or
23 change an honest belief about the weight and effect of the
24 evidence simply to reach a verdict.

25 Conduct of the jury. I have read you -- given you this

1 instruction so many times. I'm not going to give you the whole
2 instruction again. But the instruction is in there. You
3 should read it. And I will just remind you of the high points,
4 which is that you should not -- cannot be conducting any of
5 your own independent research. You cannot be communicating
6 with anybody else about the case or the people involved in it.
7 You -- and if -- you cannot expose yourself to any media
8 reports about the case. And if any of these things happen to
9 you or you believe that any of these things have happened to
10 another juror, you should bring it to the attention of Kristen
11 or me immediately.

12 These instructions are very important, and if these
13 instructions are not followed, it could result in a mistrial
14 that would require the entire process to start over again.

15 The same instruction regarding a transcript -- regarding a
16 transcript of the trial applies. You won't have a transcript
17 back there. You can request a read back of certain testimony
18 if you wish. If you request part of a witness' testimony, I
19 may order that you hear more of it for context. I may
20 determine that it is not appropriate to have read back. I will
21 discuss that with the lawyers in advance, but you do have that
22 available to you if you need it.

23 Again, I gave you this instruction last time; but I will
24 give it to you again. If it becomes necessary during your
25 deliberations to communicate with me, you may send a note

1 through the courtroom deputy signed by any one or more of you.
2 No member of the jury should ever attempt to communicate with
3 me except by a signed note. I will not communicate with any
4 member of the jury on anything concerning the case, except in
5 writing or here in open court.

6 If you send out a question, I will consult with the
7 lawyers before answering it, which may take some time. You may
8 continue your deliberations while waiting for the answer to any
9 question.

10 And remember that you are not to tell anyone, including me
11 or the courtroom deputy, how the jury stands, whether in terms
12 of vote count or otherwise until after you have reached a
13 unanimous verdict or been discharged.

14 A verdict form has been prepared for you. After you have
15 reached a unanimous agreement on a verdict, your presiding
16 juror should complete the verdict form according to your
17 deliberations, sign and date it, and advise the courtroom
18 deputy you are ready to return to the courtroom.

19 So those are your instructions. As I said, a written copy
20 set will be provided for each of you during your deliberations.

21 Now we will begin with closing arguments. We will start
22 with the Plaintiff. And after Ms. Moore gives her closing
23 argument, we will take a break. Then we will hear from
24 Monsanto. And then we will hear a short rebuttal from the
25 Plaintiff. And then it will be time for you to deliberate.

1 So you can proceed, Ms. Moore.

2 **MS. MOORE:** Thank you, Your Honor.

3 **CLOSING ARGUMENT**

4 May it please the Court, Counsel, Ladies and Gentlemen of
5 the Jury. We are here. A month later we have finally made it
6 to this day, and Mr. Hardeman has asked me to simply say to you
7 Thank you. Thank you from the bottom of his heart, from
8 Mrs. Hardeman as well for your commitment, your devotion and
9 for your attention over the last month. We recognize that it
10 is a huge sacrifice on each of your parts, and we thank you for
11 that.

12 Now, this is kind of the hard part as a lawyer because I
13 now have to stand up here and turn the case over to you. And
14 it is a case that we have worked on for a long time. You heard
15 Mr. Hardeman say he filed this lawsuit in February 2016. And
16 we have worked on this case. We have looked at thousands of
17 documents, and Ms. Wagstaff and I have fought every day to make
18 sure Mr. Hardeman has his day in court, and one of the largest
19 companies in the world, and here we are. And now we are here
20 on behalf of the entire team to thank you for your service and
21 to say It's in your hands.

22 So let's get started.

23 Phase One, you-all made the decision that Roundup was a
24 substantial factor in causing Mr. Hardeman's non-Hodgkin's
25 lymphoma, and now we are in Phase Two. After you made that

1 decision in Phase One that Roundup caused his non-Hodgkin's
2 lymphoma, you heard throughout this trial, Phase Two, Monsanto
3 continued to say there is no evidence Roundup causes
4 non-Hodgkin's lymphoma.

5 So when you go back in that jury room -- and the judge
6 just gave you these instructions, and he told you about -- it
7 is the same -- similar instructions that you had before about
8 electing a presiding juror. And then, same thing as last time,
9 we need each of you -- all six of you -- to reach a decision
10 for Mr. Hardeman. We have to count on each one of you to vote
11 for Mr. Hardeman.

12 And when you see this verdict form, Ladies and Gentlemen,
13 it is three questions on the front page, three questions. And
14 what we ask for you to do is check yes, yes, and yes. Because
15 we believe that we have tipped those scales, not just a little
16 bit -- not that feather -- but that we have tipped those
17 scales.

18 And what I'm going to do now is give you some tools so
19 that when you are back there in that jury room -- just like you
20 spent almost a week before back there -- that you have these
21 tools. And you know the exhibits because you will have the
22 exhibits again, but there are a lot more exhibits now.

23 And I wanted to point out to you, so when you have
24 someone -- everyone -- you should listen to everyone's opinion,
25 you should hear what everyone has to say, but if there is a

1 disagreement or someone is like, I don't know about this, then
2 you can say, Hold on a second. Remember, the Judge said we are
3 to follow the law; listen to what the evidence is. And this is
4 what I want to point out to you.

5 So Phase Two, this is about Monsanto. It is about their
6 bad conduct since they put Roundup on the market in 1975. And
7 what the evidence has shown, Ladies and Gentlemen, is that
8 Monsanto knew or should have known the entire time Mr. Hardeman
9 was spraying Roundup that Roundup causes non-Hodgkin's
10 lymphoma. That's all that evidence that you saw in Phase One
11 and how you-all reached your decision that Roundup causes NHL,
12 they knew all of that. They knew all of that long, long before
13 Mr. Hardeman stopped spraying Roundup. They knew it.

14 Another fact. Monsanto admits -- remember those requests
15 for admissions? And the Judge pointed out to you that you will
16 see this when you go back there, Instruction Number 6 explains
17 requests for admissions to you -- and that you must treat these
18 facts as having been proved. And one of those requests for
19 admissions is that Monsanto says -- they admit, they have never
20 warned that Roundup causes cancer. It's not on the label,
21 Ladies and Gentlemen.

22 Remember what Mr. Hardeman said on the stand is that if
23 they had warned that it causes cancer, he wouldn't have used
24 the product. We wouldn't be here today if they had taken the
25 time and told the truth and warned that it causes cancer.

1 And then the last fact that we are going to spend some
2 time on this morning is that Monsanto acted recklessly and with
3 conscious disregard for safety. And that is the exact opposite
4 of what a company should be doing.

5 A responsible company -- a responsible company would test
6 its product. A responsible company would tell consumers if
7 they knew that it caused cancer. And Monsanto didn't do either
8 of those things.

9 So what is Monsanto's knowledge? Now, I know as soon as I
10 put the epidemiology up here, everyone is going to have
11 flashbacks of Phase One. I'm not going to go through all the
12 epi studies. But what I do want to show is this is what they
13 knew from 1975, when Roundup went on the market, through 2012.
14 Remember Mr. Hardeman sprayed from 1986 to 2012.

15 So what did they know in that time period?

16 This is undisputable. This is not about what someone
17 testified in a deposition about, what Monsanto's employees say
18 now. This is what did they know then. And that's a really
19 critical difference.

20 When you are back in that jury room, think about what do
21 the documents say? What do the internal documents say from
22 Monsanto? Not what they say in a deposition with the comfort
23 of their own attorney, but what did they say back in 1999?
24 What did they say back in 2003? What did they say back in the
25 1980s that they knew? That's what I want you to look at is

1 these documents.

2 Because, remember, after you made a finding in Phase One
3 that Roundup causes non-Hodgkin's lymphoma, did you see one
4 person from Monsanto, other than their attorneys, come here and
5 say that's not right. We stand by our product. Did anyone
6 come in this courtroom from Monsanto and defend the safety of
7 Roundup? No. They didn't call any single live witness to
8 stand up here and tell you ladies and gentlemen that you are
9 wrong and all the science is wrong.

10 So here is the science.

11 Remember *Hardell* 1999, *McDuffie* 2001, *Hardell* 2002, *De*
12 *Roos* 2003, and *Eriksson* 2008. All of these epi studies all
13 showed an association between Roundup and non-Hodgkin's
14 lymphoma, Roundup and non-Hodgkin's lymphoma. They knew about
15 every single one of these studies. And meanwhile, what is
16 happening in that time period? Mr. Hardeman is spraying
17 Roundup. All right. That's the epi.

18 Let's go to the animal. We heard -- remember Dr. Portier
19 testified in Phase One about the mice and rats? The first one,
20 *Knezevich & Hogan*, 1983 -- this is before Mr. Hardeman ever
21 started spraying Roundup -- when that study came out originally
22 in 1983, if Monsanto had done the right thing and put a warning
23 on the label, we wouldn't be here. We wouldn't be here.
24 Instead, they didn't.

25 1993, '97, '99, 2001, 2009. And they remember the *George*

1 study in 2010. That George study was the one where they
2 actually used Roundup, and they put it on the mice skin. And
3 what did Dr. Portier tell you yesterday? Every single one of
4 these mice studies showed malignant lymphomas, just like what
5 Mr. Hardeman has. This is what they knew -- Monsanto knew
6 about all of these mice studies.

7 Oxidative stress, remember we talked about that in
8 Phase One? That comes up in 2005, 2009, 2010. All three of
9 these publications Monsanto knew about.

10 Genotoxicity. Remember we had all that testimony about
11 Roundup being genotoxic? First one, 1980 -- again, before
12 Mr. Hardeman started spraying -- 1993, '97, '98, '98. And
13 those four, Ladies and Gentlemen, is what forms the basis of
14 the Parry report that you heard about in Phase Two, but they
15 keep going.

16 Of course, here is the Parry. And Parry is, of course,
17 the professor they hired to tell them whether it is genotoxic.
18 And when they told him that I think it could be genotoxic, what
19 do they do? They don't do what he says. And they don't share
20 it with the EPA. They don't share it with anyone.

21 Keeps going. More genotoxic. 2004, 2005, 2007,
22 *Paz-y-Mino*. You will remember that is the aerial spraying
23 study.

24 2009, the second Bolognesi, which is also the aerial
25 spraying study.

1 2009 again, 2009 again, 2012. These are all the genotox
2 studies all showing Roundup or glyphosate having a genotoxic
3 effect. This is everything Monsanto knew from 1975 to 2012.
4 This is undisputed, Ladies and Gentlemen. That is what they
5 knew.

6 And 1985 they also knew that the EPA categorized
7 glyphosate as a Class C oncogen, meaning it is capable of
8 causing cancer. What did they do in 1985? We are going to
9 talk about this. What they did not do is they didn't take it
10 off the shelf, and they didn't put a warning on it; the year
11 before Mr. Hardeman started spraying.

12 So after hearing all of this and you-all reached your
13 decision in Phase One, what does Monsanto come in here and say
14 to you? And this is Dr. Reeves who was designated by Monsanto
15 to speak on its behalf on behalf of the company.

16 (Video played.)

17 **MS. MOORE:** No evidence across the board. No evidence
18 across the board? Are you kidding me? That, Ladies and
19 Gentlemen, is reckless. That is a reckless thing to say. And
20 frankly, it is offensive. It is offensive after you-all made
21 your finding. It is offensive when you see all the information
22 they had for 60 days ago, in January, for their spokesperson,
23 for their designated representative to come to this court and
24 say, No evidence across the board, it is just flat-out untrue.

25 I'm going to move that slide -- I went ahead and put this

1 up here, which is just so I can keep referring to it, because
2 this is important. This is the knowledge.

3 So let's look at Monsanto's conscious disregard of all of
4 this information. First thing, you heard testimony from
5 Dr. Portier yesterday about the IBT scandal. So 19 -- in the
6 1970s when Monsanto submitted for approval to the EPA, the
7 initial approval to the EPA, it was based on a study conducted
8 by IBT labs.

9 1983 the EPA found that study to be invalid. So from 1975
10 to 1983, the approval from the carcinogenicity standpoint for
11 glyphosate was based on one study from IBT, a mouse study that
12 was then held to be invalid. What did the company do when they
13 were told it was invalid? Let's look at the document.

14 So remember you saw this. It was called out. And it says
15 Glyphosate, and then the first column is Oncogenicity and zero.
16 You see down at the bottom, Ladies and Gentlemen, where it says
17 zero equals IBT. That is the IBT Labs. It is saying that the
18 oncogenicity study was done by IBT.

19 And then if you look over to the right-hand column, it
20 says Data Column. And Dr. Portier explained that when the EPA
21 put something like that in, that means they are asking for more
22 data from the company, okay.

23 And then you look at the next sheet -- I will call this
24 out -- this is Glyphosate, Monsanto, the carcinogenicity study.
25 It is a mouse study. And the "I" Dr. Portier testified to

1 meant invalid. So the study where they got the original EPA
2 approval was determined to be invalid. And that was a mouse
3 study.

4 So there was no valid study from 1975 to 1983, and you are
5 going to hear in a few minutes -- when Monsanto's attorney
6 stands up here, you are going to hear a lot about the EPA, a
7 lot about the EPA. But I want you to think about let's look at
8 the history of Monsanto and the EPA. And we got to go all the
9 way back to -- gosh, a long time, 1983 -- 35 years ago, 36
10 years ago -- and look at when they determined that the initial
11 study was invalid. And what did Monsanto do when they found
12 this out that the study was invalid? They didn't take it off
13 the market and they didn't warn.

14 Now, let's go to what happened in 1983, '85. So remember
15 that first mouse study was *Knezevich & Hogan*. And you-all have
16 heard all about this study that I'm going to write up here
17 because these are some trial exhibits that I think are
18 important, and I'm just going to put K&H for that.

19 And 1983 the *Knezevich & Hogan* study was done and they
20 found lymphoma. 1985 the EPA determines that glyphosate is a
21 Class C oncogen. In accordance with EPA for post-guidelines,
22 the panel has classified glyphosate as a Category C oncogen.
23 That is the finding in 1985.

24 And these are Trial Exhibits 503 and 505. You will have
25 those in the back with you.

1 And they base that -- that glyphosate was oncogenic, in
2 male mice causing renal tubule adenomas -- adenomas -- I never
3 can say it right -- a rare tumor in a dose-related manner.
4 Remember all the dose response information? That's what they
5 found.

6 And then what is Monsanto's plan? What is Monsanto's
7 response when they are told that it is -- it is a Category C
8 oncogen? A responsible company would first say, Should we take
9 this off the market? Or should we test it? Or should we put a
10 warning on it that it is an oncogen? It is going to cause
11 cancer. They don't do anything.

12 Here is their response. Short of a new study or finding
13 tumors in the control group, what can we do to get this thing
14 off of Group C? That's their response.

15 And this is 506. And you can see that one for yourself.
16 And so what they are saying is, All right, EPA. You are saying
17 it is a Class C oncogen now. I guess the only way we can get
18 it out of there is to find a tumor in the control group.

19 And, lo and behold, what do they do? Here is first, zero
20 in the control group, zero low, one in the medium, and three in
21 the high. What do they do? They hire someone to look at the
22 study again; and lo and behold, they find that magic tumor, the
23 one tumor in the control group. And why does that matter?
24 Because it changes everything in 1985 to '86. It is no longer
25 highly significant.

1 Now, the EPA looked at it again. Other pathologists
2 looked at it again. The only pathologist who ever said there
3 was a tumor in the control group was the one Monsanto hired.

4 They reviewed -- the EPA reviews the kidney slides and
5 does not find a tumor. They issue a guidance document, and
6 that's 514.

7 508 and 509, that's where they -- Monsanto sent the slides
8 to Dr. Kuschner. So you will have all that back there too.

9 So Monsanto's reaction in 1986, the next year, after they
10 told the EPA about this magic tumor, they come back and they
11 say, We agree to repeat a rat study -- now, remember this is
12 about a mouse study -- and we vehemently argue the lack of
13 justification for a repeat mouse study.

14 Ladies and gentlemen, they have never, never repeated that
15 mouse study. They don't want to repeat that mouse study. And
16 you have to ask why that is. When all the other mouse studies
17 show lymphoma, you have to ask why they don't want to do that.

18 So they refuse.

19 And Dr. Reeves testified to it: And, in fact, Monsanto
20 never re-did the mouse study, did it?

21 His answer: We conducted a rat study.

22 Question: So Monsanto in response to the glyphosate, the
23 registration document -- that is the EPA document --
24 specifically said we want a waiver from having to do this mouse
25 study, correct?

1 That's correct.

2 And that's 516.

3 Since that day Monsanto -- to this day Monsanto has not
4 done -- ever done another mouse study with glyphosate, right?

5 Answer: No, because all the other registrants have for
6 their data package.

7 It is not about the EPA. It is not about the regulatory
8 agencies. It is about what Monsanto should be doing. It is
9 about whether a responsible company would put a product on the
10 market without warning it causes cancer when they know that it
11 does.

12 **THE COURT:** Ms. Moore, can we take a brief sidebar?

13 **MS. MOORE:** Oh, sure.

14 (The following proceedings were heard at the sidebar:)

15 **THE COURT:** Okay. So there was a little confusion
16 between me and Kristen. Kristen handed me a note saying that
17 some of the exhibits that you were writing down on the board
18 were not admitted, but what she didn't -- what Kristen didn't
19 realize was that they were admitted in Phase One.

20 I apologize for the interruption, but it's fine. But
21 Kristen is going to have to prepare the exhibits for -- she was
22 not planning on sending back the Phase One exhibits. We are
23 going to need to work with her on that.

24 **MS. MOORE:** Okay.

25 (The following proceedings were heard in open court:)

1 **MS. MOORE:** Then there were a couple others I wanted
2 to write up here about this mouse study. 515 and 512 and 516,
3 and then the last one will be 1178. The reason I put 1178 up
4 there is because 1991 -- and you will hear from the Defense --
5 that's when EPA changed from a Category C, the oncogen, to a
6 Category E, evidence of non-carcinogenicity. But what is
7 really important about that is what the EPA says -- and you can
8 see this in 1178 -- the EPA says: This should not be
9 interpreted as a definitive conclusion that glyphosate will
10 not -- will not be a carcinogen under any circumstances.

11 What they are saying is they don't have definitive
12 evidence one way or the other, and that's important.

13 So that's what happened in the '80s. And Monsanto's
14 response, you know, when the EPA -- when they are coming in
15 here to this courtroom and saying, Ladies and Gentlemen, EPA
16 has approved the product. When the EPA says you need to repeat
17 a mouse study and first you ask for a waiver, and then second
18 you never do it, it is hard to hang your hat on the EPA.

19 And here is the timeline. '75 is the initial approval
20 based on an invalid study. 1983, EPA found glyphosate to be a
21 Class C oncogen. '85, EPA orders Monsanto to redo the mouse
22 study. '86, Monsanto finds a magic tumor in the control group
23 that nobody else has found. 1986, EPA does not see the magic
24 tumor. And in 1991 the EPA changes it to Class E. Monsanto
25 has never redone that mouse study. That is not what a prudent

1 company should do.

2 Parry, 1999. So this is following these four studies,
3 Ladies and Gentlemen, that we talked about in Phase One, the
4 genotox studies in the '90s. And Monsanto knew that there was
5 an issue. They think it is a problem. It is actually
6 scientific information being provided to them.

7 And what do they do? They hire Dr. Parry. And the first
8 document to look at when they hire Dr. Parry is an internal
9 Monsanto document. And it is talking about someone getting
10 someone to be supportive of glyphosate. And that is 155. And
11 I'm going to write Parry -- I'm trying to group these for
12 you-all, and -- so that is 155.

13 So Monsanto calls Dr. Parry, I'm looking for someone who
14 is going to be in support of glyphosate. That's what the
15 document says. And then they ask him to look at those four
16 studies. He looks at the four studies -- and you saw this --
17 here it is. Sorry. Discuss with him his participation in
18 support of glyphosate, glyphosate-based formulation, genotox
19 issues.

20 And what does Dr. Parry come back and say? You heard from
21 Dr. Portier, because Dr. Parry is no longer with us, that
22 strong evidence that glyphosate may be genotoxic. That's what
23 they knew in 1999. This is their own person they hired telling
24 them this.

25 And what is their response to this? Their reaction is

1 they develop this press release -- and this is 156. And in
2 this press release they say, Several genotoxicity studies have
3 been conducted on glyphosate, the surfactants in glyphosate
4 formulations and other closely related surfactants. Studies
5 have also been performed on Roundup herbicide and other
6 glyphosate formulations.

7 None of these studies have shown any adverse findings.
8 That's a flat-out lie. Remember what the studies showed in
9 Phase One? This is what they decide to do. The development of
10 a positive press release. And then they are asking for
11 comments internally. Meanwhile, Dr. Parry had found that it is
12 capable of being genotoxic, both in vivo and in vitro. And
13 here is their response to Dr. Parry. Let's send out a press
14 release saying there is nothing.

15 When they find out -- I'm going to put 157 and then 158
16 and 159 -- because these -- 158 and 159, you will see these.
17 These are internal e-mails after they got the results from
18 Dr. Parry, and some of the things they said is: Has he ever
19 worked with industry before? We may have to help him write all
20 this. Help to produce the definitive report without twisting
21 his arms.

22 And 158, after they provide more information, what they
23 say is with the hope of, quote, "moving Dr. Parry from his
24 position." Not finding an objective result. They want him to
25 be on their side. They don't want objectivity. They want to

1 turn his opinion around. That's what they wanted in 1999.

2 So Parry will say it all again. He looks at more
3 information and he concludes glyphosate is a potential
4 clastogenic *in vitro*. And remember, this is an agent that can
5 induce mutation by disrupting or damaging the chromosomes.

6 This is Exhibit 160 that you'll have back there. And this
7 is when he comes up with the recommendations, and this is
8 critical because Donna Farmer's deposition was played the other
9 day. Remember Donna Farmer is one of the head toxicologists at
10 Monsanto. She's been there for a number of years. She's a
11 spokesperson for the company. She acts on its behalf. She's
12 one of the decision-makers there, along with Dr. Heydens who
13 you heard from yesterday.

14 And Monsanto's reaction when they get this back from
15 Dr. Parry, at first it's (reading):

16 "Roundup is currently very vulnerable in genotox."

17 Okay. So they admit this. But here is what they say
18 (reading):

19 "We simply aren't going to do the studies Parry
20 suggests."

21 That's 161. I want you-all to look at that e-mail. 161
22 (reading):

23 "We simply aren't going to do the studies Parry
24 suggests."

25 Now, when Donna Farmer was deposed in January, she went

1 through this chart. And you're going to hear from Monsanto's
2 attorney, "Oh, well, you know, we did this study. We did that
3 study." Here's what she said in 1999 (reading):

4 "We simply aren't going to do the studies."

5 And the rest of the e-mail says, if you look at that
6 (reading):

7 "We want to find" -- this is the second sentence in
8 the second paragraph -- "We want to find and develop
9 someone who is comfortable with the genotox profile of
10 glyphosate/Roundup and who can be influential with
11 regulators" -- that's EPA -- "and scientific outreach
12 operations when genotox issues arise. My read is that
13 Parry is not currently such a person and it would take
14 quite some time and money" -- several dollar signs --
15 "studies to get him there. We simply aren't going to do
16 the studies Parry suggests."

17 And then he asks Mark Martens (reading):

18 "Do you think Parry can become a strong advocate
19 without doing this work? If not, we should seriously
20 start looking for one or more other individuals to work
21 with. Even if we think we can eventually bring Parry
22 around close to where we need him, we should be partly
23 looking for a second backup genotox supporter." Again,
24 they don't care what the science actually shows. "We've
25 not made much progress and are currently very vulnerable

1 in this area."

2 They knew back in 1999 Roundup was genotoxic. They had
3 the information to make that determination and then chose not
4 to.

5 So what else do they do? They said "Let's get Dr. Kier."
6 You heard from Dr. Kier yesterday. He worked at Monsanto a
7 number of years and then he retired and was a consultant. And
8 then they say (reading):

9 "Right now the only person I can think of to dig us
10 out of this," quote, "genotox hole is the good Dr. Kier."

11 A genotox hole? There is no mention in any of these
12 e-mails, ladies and gentlemen, about "We've got a problem that
13 our product is not safe. We need to have discussions about
14 whether it should be on the shelf. We need to have discussions
15 about telling the public." Nothing. There is nothing about
16 that in the documents. It's all about "How can we get someone
17 on our payroll to put out information that is false, that is
18 wrong, that goes against what the science shows?"

19 Let me go back. I don't know why that's flashing, but
20 we're going to go away from that.

21 Let me go back.

22 **MR. WOLFE:** Hold on a second.

23 **MS. MOORE:** Okay. Thank you. Are you pushing it too?
24 I'll just stop.

25 **MR. WOLFE:** No.

(Pause in proceedings.)

THE COURT: If you want to take a five-minute break to get it fixed, that's totally fine.

(Pause in proceedings.)

MS. MOORE: Thank you. Thank you, Mr. Wolfe.

Okay. All right. I'm going to put down the rest of these numbers. There was only one more and that was the genotox hole, and that's 208.

Okay. So they bring in Dr. Farmer in this deposition to say all these things about tests. And I just wanted to remind you-all, I read these requests for admissions into the record, and this was Request for Admission Number 5. And remember it was that we asked Monsanto before trial (reading):

"Admit that Monsanto has never conducted a long-term animal carcinogenicity study on any glyphosate formulation."

And they admit that. They admit that. That is what is in evidence here.

Okay. Go to the next one. Okay, great.

And then they admit that Monsanto has not conducted a long-term animal carcinogenicity study on glyphosate since 1991. That was a long time ago. That's actually the year I graduated high school so I know it was a long time ago. But they admit that. They haven't done any of those studies on glyphosate. Now, again, that's not on the formulation.

1 And then they admit that Monsanto has never conducted a
2 long-term animal carcinogenicity study on any surfactant used
3 in a glyphosate-formulated product. They admit that. They
4 admit that.

5 And then they admit that Monsanto is not precluded by any
6 applicable law, regulation, or ordinance from conducting a
7 long-term animal carcinogenicity study on a glyphosate
8 formulation. They admit there is nothing that precludes them
9 from doing it. They just choose not to do it.

10 So when you hear Monsanto's attorney argue "Well, we've
11 done some tests and everything," well, what are those tests?
12 Those tests, ladies and gentlemen, remember these charts they
13 showed you in Dr. Farmer's testimony in Phase II? I'm sure
14 they're going to show them to you again in their closing.

15 They didn't show them to you in Phase I when we were
16 trying to decide whether Roundup caused non-Hodgkin's lymphoma.
17 I thought that was interesting.

18 Dr. Farmer said --

19 **MR. STEKLOFF:** Objection, Your Honor.

20 **THE COURT:** The objection is overruled, but I will
21 remind the jury again that attorney argument is not evidence
22 and you should be focusing on the evidence that's presented in
23 the case.

24 **MS. MOORE:** And what's important is this one that is
25 marked as 479, ladies and gentlemen, is titled "Surfactants."

1 This is genotoxicity studies on surfactants, not on Roundup.

2 Okay? So we can put that one to the side.

3 The other one -- I'll take my little Post-its off -- is on
4 formulated product. Remember Dr. Farmer testified about how
5 there were different tests and one was acute toxicity and that
6 doesn't tell you about cancer, it talks about irritation of the
7 skin? Remember the admissions. They didn't test on glyphosate
8 since 1991, and they have never conducted a long-term animal
9 carcinogenicity study on any glyphosate formulation.

10 Here's what the lawyer and Dr. Farmer put together
11 (indicating). Formulated products; right? The admission says
12 they've never done this. They have this but if you look at it,
13 it's salmonella, salmonella, mouse bone marrow, bacteria.

14 In order to get to human lymphocytes, you have to go all
15 the way over to the last two pages. It starts here
16 (indicating) goes to here (indicating), October 2016. Eight
17 months after Mr. Hardeman files a lawsuit do they start testing
18 about human lymphocytes with the formulation. And, lo and
19 behold, guess what the result is? Negative.

20 All right. Backed up.

21 So there is this refusal to test after Dr. Parry tells
22 them they need to test, that he recommends testing. In fact,
23 Mark Martens -- and this is 686, I'll put "refusal to test."
24 My handwriting is going to get really bad.

25 Okay. 686. And in that he says (reading):

1 "If somebody came to me and said they wanted to test
2 Roundup, I know how I would react -- with serious
3 concern."

4 "Serious concern." Again, not about, you know, "We've got
5 a problem here. We really should be studying our product."
6 No. It's more about: How are we going to fend this off?

7 I don't know if they're going to make this argument. I
8 hope they wouldn't make this argument. I just want to raise
9 this. There was nothing, nothing to preclude Monsanto from
10 testing Roundup. They've never done it, and there was nothing
11 to preclude them from doing it.

12 In fact, this is -- remember Hugh Grant? He's the -- not
13 the actor -- the former CEO of Monsanto (reading):

14 "Just to be clear, I -- make sure I heard you
15 straight. Monsanto was spending on the order of one and a
16 half billion dollars" -- \$1 billion a year -- "in research
17 and development?"

18 He goes: "More or less, yeah."

19 And they couldn't do a study on Roundup? They're spending
20 one and a half billion dollars and they couldn't take the time
21 to study a product that they had on the shelf since 1975?

22 Knowing all of this information is out there, knowing that they
23 had to hire someone in 1999, they couldn't have taken a little
24 bit of that one and a half billion dollars and test it?

25 So what happens after Parry? The Hardell comes out,

1 Hardell article. And how do they respond to that? Remember
2 they say it's an index of concern. So I'm going to write on
3 the next page -- I think it's 686 -- let's see, let's go to epi
4 just to show you that they knew about all these and how they
5 responded internally.

6 So this is 86, and they say there's an index of concern
7 for glyphosate and future agricultural epidemiological studies.

8 And then this was that -- I don't know if you-all
9 remember -- well, you probably -- I'm sure you do -- in
10 Phase I, remember this exhibit in Phase I (indicating)? Now
11 you're going to have Exhibit 220. It's the unredacted version
12 of it. 220.

13 And here's what they say Monsanto said about Hardell in
14 1999 Hardell (reading):

15 "Just the tip of the iceberg for these types of
16 association epi studies."

17 "Just the tip of the iceberg." They knew. Don't let them
18 stand up here and try to say that, "We didn't have any reason
19 to believe there was association." Here's what their internal
20 documents in 1999 say.

21 So what do they do after Parry? What do they do after
22 Hardell comes out and they know it's the tip of the iceberg and
23 know they're in this genotox hole? These are their words,
24 ladies and gentlemen, not mine. They start ghostwriting. And
25 you heard a lot of testimony about the Williams 2000 article,

1 and I just wanted to point out some of the e-mails.

2 And this is Dr. Heydens' e-mail to Dr. Farmer, and this is
3 back in 1999. I'm just going to write "ghostwriting" up here
4 (indicating) because I've tried to put all the ghostwriting
5 stories together for you -- or the exhibits, and this one is
6 314.

7 And Heydens, who in his deposition acted like, "Oh, I
8 didn't ghostwrite." I mean, if you look at the acknowledgment
9 section in Williams, "It says 'Monsanto' in the acknowledgment.
10 So, you know, everybody knew that we were acknowledged."
11 That's not being an author on a paper.

12 And what does he say? (reading)

13 "And Dougie" -- this is someone -- a grown man named
14 Doug, Douglas -- "thinks I would actually leave the final
15 editing to him unsupervised."

16 That's 314.

17 301. This is the e-mail 15 years later where Dr. Heydens
18 says (reading):

19 "A less expensive, more palatable approach might be
20 to involve experts only for the areas of contention,
21 epidemiology and possibly MOA, and we ghostwrite" -- "we
22 ghostwrite" -- "the exposure tox and genotox sections."

23 So, you know, all that testimony about "I don't know what
24 ghostwriting is" or "I don't know this definition. It has many
25 definitions," again, I want you to go back to the documents.

1 301. It says (reading):

2 "An option would be to add Greim and Kier or Kirkland
3 to have their names on the publication, but we would be
4 keeping the cost down by us doing the writing and they
5 would just edit and sign their names so to speak. Recall
6 that is how we handled Williams, Kroes, and Munro in
7 2000."

8 He admits it.

9 And here is why this is significant, ladies and gentlemen,
10 and this is 464. The reason it's significant is that they
11 consider Williams, the publication by independent experts,
12 which again no one knew it was actually Monsanto (reading):

13 "The most exhaustive and detailed scientific
14 assessment ever written on glyphosate," it says, "was due
15 to the perseverance, hard work, and dedication of the
16 following group of folks. They deserve significant credit
17 for the stewardship result here."

18 It says (reading):

19 "This human health publication of Roundup herbicide
20 and its companion publication," it goes on, "will be
21 undoubtedly regarded as the reference on Roundup and
22 glyphosate safety."

23 That's Monsanto. That's their plan. They want Williams
24 to be the reference on Roundup, not any of this other stuff.

25 And they go on, this is still in 464 (reading):

1 "Now the hard work by public affairs" -- so their
2 Communications Department -- "begins in utilizing these
3 reference documents to the fullest. This is where public
4 affairs strategy begins to kick in globally."

5 "Globally." They want everyone in the world to know about
6 the Williams article, just not that they wrote the whole thing.

7 And what does their CEO say? He ratifies it. He says
8 (reading):

9 "This is very good work. Well done to the team.

10 Please keep me in the loop as you build the PR info to go
11 with it. Thanks again."

12 This starts at the top and works its way down at Monsanto.
13 He's ratifying their ghostwriting.

14 And then what does Dr. Saltmiras say? This is 312. This
15 is a PowerPoint slide that you're going to have back there with
16 you. So 312. He says (reading):

17 "Williams is an invaluable asset."

18 And, look, "Regulator reviews," that's EPA; "FTO," the
19 freedom to operate. It's all about their freedom to operate,
20 not about safety.

21 And what does Heydens say? "It's a very important paper."
22 In fact, he said it three times during his testimony.

23 And then Saltmiras, again back to the PowerPoint, he says
24 (reading):

25 "Williams, et al., has served us well in toxicology

1 over the last decade. We need a stronger arsenal of
2 robust scientific papers to support the safe use of our
3 products as we face the next set of chemistry registration
4 reviews..."

5 They're getting ready for reapproval and they want to get
6 a stronger arsenal together.

7 And here's an example of how Williams served them well.
8 This is the De Roos 2003 publication. You'll remember this.
9 And in there there was one publication. Remember? That
10 De Roos 2003 said "even though one review concluded that the
11 active ingredient is noncarcinogenic and nongenotoxic." One,
12 and it's Footnote 50.

13 And guess what that one paper was. Williams. That's the
14 only one that De Roos found in 2003 that was against all of the
15 other information in the scientific community written by
16 Monsanto.

17 So this is a pattern of ghostwriting by Monsanto. And
18 this is, again, Dr. Farmer and she's doing another epi review,
19 and she says she offered suggested edits. She adds (reading):

20 "It was concluded that glyphosate is unlikely to pose
21 a carcinogenic risk to humans."

22 And guess what she cites? Williams.

23 She adds to the paper (reading):

24 "Glyphosate is widely considered by regulator
25 authorities and scientific bodies to have no carcinogenic

1 potential."

2 And she's not listed on the final paper.

3 Another one, she's redlined out as the author, not listed
4 on the final paper. This is a pattern at this company of
5 ghostwriting.

6 What else did they do? McDuffie. You heard about the
7 McDuffie abstract. McDuffie had found that in 2001, there was
8 statistically significant doubling of the risk, the
9 dose-response; the more you use, the more likely it is you're
10 going to get non-Hodgkin's lymphoma.

11 And so what did they do? They set out and they said
12 (reading):

13 "I don't know yet what it says in the small print,
14 but the fact that glyphosate is no longer mentioned in the
15 abstract is a huge step forward. It removes it from being
16 picked up by the abstract searches."

17 They're celebrating that they got glyphosate out of the
18 abstract. Remember, that's the summary at the beginning of the
19 publication. Glyphosate not mentioned in the abstract.

20 And so they say (reading):

21 "I understand the situation correctly, even though
22 reference to glyphosate wasn't removed entirely, there was
23 a substantial reduction in emphasis, including, but not
24 limited to, removal from the abstract."

25 And Dr. Acquavella, their toxicologist, says -- I'm

1 sorry -- their epidemiologist, says (reading):

2 "Right. It's a good result, but not everything we

3 wanted." And he put in parentheses, "invalid result."

4 Could be cited as a second glyphosate/NHL finding." A

5 second one. They knew it. This is in 2001. "However, it

6 will not be picked up by most of the usual suspects

7 because it's not mentioned in the abstract."

8 Let me make sure I've written these down here for you.

9 314. I'm going to write 461 is another example of

10 ghostwriting. And 462 is another one.

11 And then you've got 315 is another one that you need to

12 look at. And then 464 is what Hugh Grant, the CEO, ratified.

13 And then on McDuffie, it is 448. And I'm going to kind of

14 write a little fast because I've got to move on here. And

15 that's 448.

16 And when De Roos came out in 2003, they said it added fuel

17 to the Hardell fire. They knew. Don't let them tell you

18 there's no evidence across the board. They knew it. So look

19 at 254 as well.

20 They said in their admission Monsanto has never conducted

21 an epidemiological study to study the association between

22 glyphosate-containing formulations and NHL. They admit that.

23 So what's a responsible corporation to do? This is what

24 Hugh Grant said in his deposition (reading):

25 "Q. Mr. Grant, did you have a view about whether the

1 company should communicate with the public about the
2 safety of glyphosate?

3 "A. It's not just should. I think there's a
4 responsibility for companies like Monsanto. There's a
5 responsibility to communicate the science, to communicate
6 what the products do when used as advised. So I don't
7 think that's a should. I think, frankly, that's a
8 responsibility."

9 He thinks, the CEO thinks, it's a responsibility. So were
10 they responsible? Absolutely not. Exhibit 317, look at this
11 one, ladies and gentlemen. They write in there (reading):

12 "It's the good 'ol Monsanto way. Let's hire some
13 more scientists. Let's pick up our people to talk about
14 and defend Roundup."

15 Let's deceive. Let's ghostwrite. Let's manipulate the
16 data, and let's refuse to test and, frankly, let's lie to the
17 public about Roundup causing cancer.

18 So let's look at that document, this very important
19 document. It is 426. And I'm just going to write it here and
20 circle it because I would ask all of you to look at it when you
21 go back. This is an e-mail from Donna Farmer.

22 And 245. I'm going to start with 245. So 245 and 426 are
23 e-mails from Donna Farmer.

24 In 245 it says -- 245, it's in response to an article that
25 came out and -- for Monsanto Australia, and they're asking how

1 do we respond to these articles. And she says (reading):

2 "First, you cannot say that Roundup does not cause
3 cancer. We have not done carcinogenicity studies with
4 Roundup."

5 She admits that in 1999.

6 And then the very next line, the bullet point for press
7 (reading):

8 "Will Roundup harm my family or me?"

9 Her answer (reading):

10 "Based on the results of short-term and long-term
11 testing, it can be concluded that Roundup poses no danger
12 to human health."

13 What? She says internally "You can't say it does not
14 cause cancer. We haven't done the tests." Externally to the
15 public when they're asked will it harm my family and me, "Well,
16 based on the results of short-term/long-term testing, it can be
17 concluded that Roundup poses no danger." That's lying to the
18 public, ladies and gentlemen.

19 And, again, 426, she continues on that. I'm going to run
20 through these.

21 EPA. You're going to hear about the EPA from the defense.
22 Just remember that that was built on an invalid study, they
23 rely on information provided by Monsanto, and Monsanto had a
24 cozy relationship. You heard Dr. Reeves testify that "We have
25 conversations with EPA representatives." (reading)

1 "Q. You guys shared text messages; correct?

2 "A. There are instances where EPA officials and Monsanto
3 employees have texted each other."

4 Texting?

5 And then Dr. Portier. Dr. Portier testified that -- and,
6 remember, he's worked for government for 30 years, and he said
7 that because -- (reading)

8 "Because they've inappropriately applied the science
9 time after time after time to reach that conclusion, it's
10 an inappropriate conclusion for this particular compound,"
11 meaning glyphosate.

12 And he was asked (reading):

13 "When you see something like that, what's your
14 reaction?"

15 And he says (reading):

16 "I feel as if EPA has let down the American public."

17 And then Dr. Kier says, you know, about whether you
18 should -- whether it causes cancer (reading):

19 "I think they wanted to have information sufficient
20 for them and the regulators."

21 Again, nothing about safety.

22 I'm going to run through this.

23 And, remember, Monsanto has never warned.

24 So let's look at these jury instructions, ladies and
25 gentlemen. So on the verdict form the first question you have

1 to answer is: Did Mr. Hardeman prove by a preponderance of the
2 evidence -- the tipping of the scales -- that his claim that
3 Roundup's design was defective? And we ask that you check
4 "yes."

5 Number 2: Did Mr. Hardeman prove by a preponderance of
6 the evidence his claim that Roundup lacked sufficient warnings
7 of the risk of NHL? Again, they admit they didn't warn. We
8 ask that you check "yes."

9 And then Number 3: Did Mr. Hardeman prove by a
10 preponderance of the evidence his claim that Monsanto was
11 negligent by not using reasonable care to warn about Roundup
12 NHL risk? And, again, we ask that you check "yes."

13 We ask that you check "yes" to all three of these.

14 And then you'll turn the page and you will then decide
15 about damages. And as the judge instructed you, the parties
16 have agreed on the amount of the past medical expenses. So if
17 you find for Mr. Hardeman, that amount is already written
18 there. That's the medical expenses that have been charged to
19 Mr. Hardeman.

20 Noneconomic loss. It's really important that you look at
21 the jury instructions on this. And let's flip back over to --
22 remember Dr. Nabhan testified and Mr. Hardeman testified about
23 his harms and what this experience of having cancer has been
24 like.

25 And when you look at the compensatory damages instruction,

1 and that is Instruction Number 15, it talks about noneconomic
2 damages; and right below that, at the end of that page, it
3 outlines for you what noneconomic damages are, and that's what
4 I have here on the screen. It's for that pain, for that bone
5 pain that Mr. Hardeman experienced where they talked about it's
6 like electric waves going through his body.

7 It's the nausea. You know, when Mary -- Ms. Hardeman
8 said, you know, they had to carry a bucket in the car from all
9 of his vomiting.

10 It's the chemo brain that he went through where he's
11 forgetting things. The confusion. His loss of appetite.

12 The swelling. Remember Mrs. Hardeman said that the next
13 morning she couldn't even recognize him when he got out of bed
14 because he was so swollen?

15 And then his white blood cells, the count dropping and
16 dropping where he had to get daily shots seven days in a row,
17 and that's what caused the bone pain.

18 And then him losing his hair. The fatigue, the loss of
19 strength.

20 And then remember what Dr. Nabhan said. In the future,
21 yes, you're going to hear Monsanto's attorney, and it's a great
22 thing, that his last scans have been clear, that he's in
23 remission.

24 But I asked Mr. Hardeman what that meant to him, and he
25 talked about it was a temporary place for him because he has to

1 get repeat scans. He has one next month, and he has that
2 anxiety coming up before that scan as to whether this is going
3 to be the scan that they come back and say, "Mr. Hardeman, I'm
4 sorry to tell you, but your cancer is back."

5 And he has to live with that. He has to live with that
6 for the rest of his life because Dr. Nabhan testified that he
7 has an increased risk of other cancers because of the
8 chemotherapy.

9 And, remember, they didn't ask Dr. Nabhan one question.
10 They didn't ask anything about Mr. Hardeman's harms because
11 that's not in dispute, ladies and gentlemen. The suffering
12 this man has gone through is not in dispute. The anxiety, the
13 anguish, the emotional distress that he's going to have to face
14 for the rest of his life, that's not in dispute. The worry
15 about whether he's going to have a repeat scan and they're
16 going to tell him he has cancer, that's not in dispute.

17 So when you look at the instructions, you have to decide,
18 then, on the noneconomic loss; and I will tell you that's
19 something that, you know, people struggle with. Under the law,
20 it's your job to compensate Mr. Hardeman for these harms, for
21 all of these harms, and for the anxiety and the mental anguish.

22 And he's had that since 2014, and we don't know if he's
23 going to live another 25 years, 20 years, 15 years. We don't
24 know that, but I would submit to you that the number that you
25 should put on the jury instruction is a million dollars a year

1 for every year that he has suffered in the past for the last
2 almost four years and for the next 15 years.

3 It is up to you-all to decide the amount to put on those
4 lines on the verdict form, but I would submit to you that that
5 is a fair number given what he has gone through, and that would
6 be the past noneconomic loss for the suffering and the future
7 noneconomic loss for the suffering.

8 And then the last thing is on punitive damages. Now,
9 you'll see in the instructions, ladies and gentlemen, that
10 punitive damages -- you'll see at the very beginning (reading):

11 "The purpose of punitive damages is to punish a
12 wrongdoer for the conduct that harmed the plaintiff and
13 discourage similar conduct in the future."

14 It's not about Mr. Hardeman. It's not about any kind of
15 thoughts or feelings or harms. We don't want any sympathy for
16 him about this. This is about Monsanto. It is about this
17 company for the last 40 years manipulating the science,
18 manipulating the public opinion.

19 And you look at the documents. Here it is. You heard the
20 stipulation. Monsanto was bought last year for \$63 billion by
21 Bayer. That's what Bayer thought this company was worth last
22 year. Right before Bayer bought the company, Monsanto had a
23 net worth of \$7.8 billion. They had cash on hand -- cash on
24 hand -- of \$2.4 billion. Cash.

25 And then we talked about a few minutes ago they had

1 1.5 billion in their annual budget for research and
2 development. Now, how did they spend all that money? Zero on
3 epidemiology. Zero on *in vivo* human genotoxicology studies;
4 zero on *in vivo* oxidative stress studies; zero on long-term
5 rodent carcinogenicity studies on Roundup formulation; and
6 zero, absolutely zero dollars spent on warning the public that
7 Roundup causes cancer. All that money and they don't spend a
8 dime telling the public that Roundup can cause cancer. That,
9 ladies and gentlemen, is offensive.

10 And Roundup, make no mistake about it, is key to Monsanto.
11 Look at 788. This is an exhibit that came into evidence
12 yesterday, and Roundup -- this is an internal Monsanto
13 document. They say (reading):

14 Roundup is key to Monsanto in many aspects. It's the
15 number one weed killer all over the world. It's a
16 fantastic brand. Close to 100 percent awareness amongst
17 farmers around the globe. It's an outstanding contributor
18 to Monsanto's earnings, and Roundup FTO" -- free to
19 operate -- "needs a champion."

20 "Needs a champion."

21 So let's look at Roundup. Here's what Roundup has done
22 for Monsanto. Back in 1996 before that spike in Roundup sales
23 that you heard about, Roundup was bringing in about
24 \$130 million a year for Monsanto. By 2000 after the spike
25 started, it had grown to over \$210 million in one year alone.

1 One year alone the company brought in \$210 million on Roundup.

2 And then you'll remember this slide from Phase I that was
3 Monsanto's. Remember what happened after 2000, that the
4 sales -- the blue line is the sales -- just kept going up. So
5 this graph would keep going up. 2000 is 210 million. When
6 Mr. Hardeman's still, still spraying Roundup, they're bringing
7 in \$210 million in one year.

8 So, ladies and gentlemen, when you look at this punitive
9 damages instruction and you go over -- and it's Instruction
10 17 -- we have to show that Monsanto acted with malice and
11 oppression -- or oppression that their officers -- so
12 Hugh Grant -- their managing agents -- Donna Farmer, Bill
13 Heydens, Mark Martens, Jim Guard -- all these people that
14 you've heard from; and malice, that's kind of an old term, but
15 what it means as defined in the instructions "acting with
16 intent to cause injury or that Monsanto's conduct was
17 despicable and was done with a willful and knowing disregard of
18 the rights or safety of another."

19 When you put a product on the market and from 1975 to 2012
20 when you know that that product causes cancer and you do it
21 anyway and you don't give a consumer like Mr. Hardeman a
22 choice -- they deprived him of any choice to make as to whether
23 to buy this product. He could have made a choice and he told
24 you his choice. He wouldn't have bought it if he was warned
25 about cancer. But when you knowingly do that, that is malice.

1 Oppression means Monsanto's conduct was despicable and
2 subjected Mr. Hardeman to cruel and unjust hardship. It gave
3 him cancer. Nothing can be more cruel and unjust than to give
4 someone cancer, and that's what this company did by putting
5 this on the market.

6 So you go through here and then number A, this is on the
7 second part of the instruction: How reprehensible was
8 Monsanto's conduct? All you have to remember is what they knew
9 for all of these years, 1975 to 2012, and despite knowing all
10 of that, they still conducted a pattern and practice of deceit
11 over and over again to the American public, to Mr. Hardeman.

12 And then when you're determining the amount, in view of
13 Monsanto's financial condition, those sales from -- oh, thank
14 you -- the \$63 billion -- that's fine -- the \$63 billion, the
15 7.8 billion, the 2.4 billion, and the 1 and a half billion
16 spent on research and development. In view of that financial
17 condition, what amount is necessary to punish it -- to punish
18 Monsanto and discourage future wrongful conduct? That is a
19 decision that you have to make as a jury.

20 All I can tell you is that this company after all of this
21 time, after all of this information, after everyone in the
22 scientific community telling them that Roundup causes cancer,
23 they still come to this courtroom and they tell you there's no
24 evidence across the board. They still come to this courtroom
25 and they say it doesn't cause cancer. It's still on the shelf,

1 ladies and gentlemen. They're still selling this product.
2 They're still denying that it causes cancer.

3 After IARC came out in 2015, the International Agency on
4 Research and Cancer, and says it's a problem with carcinogens
5 in humans, what did they do? They didn't take it off the
6 shelves. They didn't warn it caused cancer. They didn't tell
7 anyone of their consumers it causes cancer. They just kept
8 selling Roundup and kept making money off of it because that is
9 the bottom line for Monsanto.

10 And so you've got to decide: Is it a year of their sales
11 of Roundup? Is it that \$210 million? Is that what's going to
12 send a message to this company? Is it the fact they have
13 \$2.4 billion in cash? Is that what's going to send a message
14 to this company? That's for you to decide.

15 But what I can tell you is that if you don't send a
16 message and a loud message, because nothing else over all these
17 years, all the data from the scientific community, IARC telling
18 them it's a probable carcinogenic -- carcinogen, nothing has
19 stopped this company, and that's because the only thing that
20 matters to them is their greed. The only thing that matters is
21 that bottom line, the profit. Remember they want this all over
22 the world.

23 And so it's your power, it's your job to say "No more,
24 Monsanto. No more. It stops today. It stops today. The
25 lying, the ghostwriting, the manipulation, it stops today. Own

1 up to it. Test your product. Put a warning on it. Let the
2 consumer know. Give the consumer that choice whether to spray
3 weeds and risk getting cancer." No ordinary consumer would do
4 that.

5 But send that message loud and clear because I guarantee
6 you, ladies and gentlemen, if you don't send that message loud
7 and clear to Monsanto, when their team of lawyers leave this
8 courtroom, they're going to make a phone call to a boardroom in
9 St. Louis --

10 **THE COURT:** Okay. You've gone significantly over your
11 time.

12 **MS. MOORE:** I'm sorry.

13 **THE COURT:** So I'm going to ask you to sit down now.

14 **MS. MOORE:** Okay. All right. Thank you, Your Honor.

15 **THE COURT:** Thank you.

16 Okay. We'll take a break and we'll be back in about ten
17 minutes. Why don't we plan on resuming at 20 after the hour.

18 Thank you.

19 **MS. MOORE:** Thank you, Your Honor.

20 (Proceedings were heard out of the presence of the jury:)

21 **THE COURT:** Okay. So given how far over your time you
22 went, we're going to use the timer for rebuttal.

23 **MS. MOORE:** I am so sorry, Your Honor.

24 **THE COURT:** That's okay.

25 **MS. MOORE:** I had no idea. I don't even have a watch

1 on.

2 **THE COURT:** Don't worry about it, but we're going to
3 use the timer for rebuttal. It will be 15 minutes.

4 **MS. MOORE:** That's fine, Your Honor.

5 **THE COURT:** The buzzer will go off and you'll be asked
6 to sit down.

7 **MS. MOORE:** It will be helpful, Your Honor. I just
8 didn't have any clue so I'm sorry. Thank you.

9 **THE COURT:** All right. So we'll resume -- anything to
10 discuss?

11 **MR. STEKLOFF:** No, Your Honor.

12 **THE COURT:** All right. We'll resume at 20 after.

13 **MS. MOORE:** All right. Thank you, Your Honor.

14 (Recess taken at 10:12 a.m.)

15 (Proceedings resumed at 10:27 a.m.)

16 (Proceedings were heard out of the presence of the jury:)

17 **THE COURT:** Just real quick, Mr. Stekloff, do you have
18 a rough estimate of how long your closing is?

19 **MR. STEKLOFF:** I think --

20 **THE COURT:** I'm not going to hold you to it.

21 **MR. STEKLOFF:** No, I understand. I think between an
22 hour and an hour and a half, and I'm hoping it's much closer to
23 an hour.

24 **THE COURT:** Okay. So we'll decide after that whether
25 to take a break before the rebuttal or not. I think we might

1 take a little break. It just depends how long it goes.

2 **MR. STEKLOFF:** Okay.

3 **THE COURT:** Okay. You can bring in the jury.

4 (Proceedings were heard in the presence of the jury:)

5 **THE COURT:** Okay. Mr. Stekloff.

6 **MR. STEKLOFF:** Thank you, Your Honor.

7 **CLOSING ARGUMENT**

8 **MR. STEKLOFF:** Counsel, good morning, everyone.

9 As you can probably tell, there weren't too many things
10 that the parties agreed on in the month that you have sat and
11 listened to us; but one thing that I think we agree on and,
12 frankly, everyone in this courtroom agrees on is how attentive
13 and responsible you have been as a jury. You have listened to
14 all of the evidence. You have paid attention. You have paid
15 attention to the videos. You obviously took Phase I and the
16 deliberation process extremely seriously, and everyone here is
17 grateful for that.

18 And as I turn to the evidence and what the evidence showed
19 in Phase II, I want to walk you through what I have said from
20 the beginning. We are going to present the full evidence to
21 you. We're not going to tell half stories. We're not going to
22 only present part of the story. We want you to consider all of
23 the evidence that you have heard, particularly in Phase II but,
24 as the Court said, you are allowed to consider the Phase I
25 evidence as we walk through the evidence today.

1 And in Phase II, what I'm going to present to you are the
2 three key questions that I think answer everything you have to
3 answer on that verdict form. The first question is: Did
4 Monsanto fail to use reasonable care to warn about the risks of
5 Roundup?

6 You've heard in the instructions today there are three
7 claims. You'll see all three claims on the verdict form when
8 you have to walk through it, but all three claims ask the same
9 thing.

10 The first is design defect, and what they are saying is
11 that an ordinary consumer who used Roundup like Mr. Hardeman
12 did would not have thought there was cancer associated with it
13 so there should have been a warning. It is: Did Monsanto use
14 reasonable care to warn about the risks of Roundup?

15 And the second two are failure to warn. Did Monsanto use
16 reasonable care to warn about the risks of Roundup? I mean,
17 the words are a little bit a difference. One asks you to focus
18 on what was known or knowable at the time. So did Monsanto act
19 reasonably based on the science? And the other has the word
20 "reasonably" right in it. Did Monsanto act reasonably?

21 That is the question that you are here to answer. That is
22 the evidence I am going to present to you today. I will then
23 talk about what did the plaintiff prove about the Roundup
24 label, and did the plaintiff prove he is entitled to damages,
25 which only is relevant if you decide that Monsanto acted

1 unreasonably. You only get to damages if you first find
2 liability.

3 So let's talk about the first question and what the
4 evidence shows. You heard evidence about Monsanto's extensive
5 testing of Roundup. You heard it from multiple witnesses.
6 Monsanto has conducted hundreds of tests on glyphosate,
7 surfactants, and the formulated Roundup product. Those tests
8 have occurred over 40 years from before the first approval in
9 1975 all the way up through today in 2019.

10 And you heard that in conducting their tests, Monsanto
11 followed good laboratory practices, which you heard is a term
12 of art. It's a term that the EPA uses, that companies use,
13 that scientists use about how tests are being conducted, and
14 you saw that evidence as well.

15 This was a report that the EPA prepared in 1996 where they
16 actually went to Monsanto's laboratory, the Environmental
17 Health Laboratory that you heard about, the EHL, and assessed
18 are they using good laboratory practices, and the answer was
19 yes.

20 You can see here they went to the laboratory, and then
21 they concluded (reading):

22 "The GLP inspection found that the procedures
23 followed by the Monsanto EHL at the time of the inspection
24 were in accord with the FIFRA" -- that's the law that
25 applies here -- "GLP regulations. The data audits" --

1 So they looked at all of the data in these tests that
2 Monsanto was running -- the genotoxicity tests, the animal
3 studies -- the data found no discrepancies between the raw data
4 and the reports submitted to EPA.

5 And what does that mean? Because I want to stop there for
6 a minute. When you run these tests, you produce pages and
7 pages and pages and pages of data with the results from the
8 tests. Then Monsanto, pursuant to the laws required by the
9 EPA, produces reports. The EPA checked those reports and found
10 no discrepancies. What was in the data is what was reported to
11 the EPA.

12 And what is the result of all of this testing that
13 Monsanto conducted for decades? You heard from Dr. Koch
14 yesterday, and this is part of what he testified. He said
15 (reading):

16 "I made reference to the regulatory dataset for
17 glyphosate because it's an unusually large dataset. It
18 has both the Monsanto safety data as well as safety data
19 from other registrants of glyphosate."

20 So this is now the EPA's safety data on glyphosate.
21 Because, remember, you heard that Roundup went off patent and
22 then there were other companies that were manufacturing
23 products using glyphosate. They had to do their own tests,
24 Monsanto wasn't involved, and they had to submit those tests to
25 the EPA and to other regulators.

1 He explained this (reading):

2 "Since glyphosate went off patent, many other
3 chemical manufacturers have begun manufacturing glyphosate
4 as well, and they have generated safety data in addition
5 to what Monsanto has so it has a larger safety dataset
6 than usual."

7 He was asked (reading):

8 "What kind of data is in the regulatory safety data?

9 "So there's an extensive toxicology database.

10 There's acute, there's repeat dose, there's developmental
11 and reproductive toxicology, there's genotoxicity, there's
12 carcinogenicity, and quite a few other studies. In
13 addition to human safety studies, there's ecotox studies,
14 residue studies, and just a considerable amount of data."

15 That is the testing that Monsanto was involved in. That
16 is the reasonableness of Monsanto testing this product over 40
17 years and submitting the data to EPA.

18 And when Monsanto tested the product, they tested the
19 product in many different ways. They tested glyphosate. So
20 the active ingredient that you've heard about both in Phase I
21 and Phase II. They tested the surfactants, that soapy
22 substance that combines with glyphosate to make it stick on
23 plants. And they tested the formulated product, the
24 combination of the two, glyphosate and surfactants.

25 They did it in multiple ways. They tested genotoxicity.

1 They tested animal studies. They tested human exposure. They
2 did long-term tests. They did short-term tests. They
3 performed all the tests required by regulators, and then they
4 conducted additional tests that were not required.

5 I mean, this is quite an allegation to stand up here and
6 say how awful and basically criminal Monsanto's behavior was
7 when they did this level of testing for 40 years beginning in
8 the 1970s and then continuing through today and then turned
9 over all of the data with no discrepancies to EPA.

10 So what did Dr. Farmer testify about the testing? She was
11 asked (reading):

12 "Give us first an overview of the substances that
13 Monsanto tested over the years as they related to
14 glyphosate and glyphosate products."

15 And she testified to what I just showed you (reading):

16 "So we have done glyphosate, the active -- what we
17 call the active ingredient. Again, we talked about the
18 next one is the surfactant. We've done testing on the
19 surfactants." That's the testing, by the way, that wasn't
20 required but they did it anyway. "And then when those two
21 are put together in the glyphosate products, the
22 formulation what we call it, we then test the
23 formulation."

24 And what did the testing show? How did it -- again, you
25 don't have to take it from me. You heard it from the

1 witnesses. She was asked (reading):

2 "Now when -- over what period of time have the tests
3 that Monsanto has done -- either in the lab that it owned
4 back in the 1980s and 1990s or third-party labs that
5 you've described -- over what period of time have these
6 tests been done?"

7 And her answer was (reading):

8 "They have been ongoing for all this time, many, many
9 years.

10 "Did it start before you" -- Dr. Farmer -- "arrived
11 at Monsanto in the 1990s?

12 "Yes.

13 "Does it continue today?" When she was just deposed
14 in 2019.

15 "Yes."

16 And I am going to show you these charts that she helped
17 prepare, so that's one place we do agree. I want to be clear,
18 these charts are not all the tests that Monsanto ran. There
19 are -- I could bring in boxes that would fill the gallery with
20 all the data and all the tests that Monsanto ran because, as
21 you've heard, they ran tests on glyphosate. They ran
22 genotoxicity tests on glyphosate. They ran animal studies.

23 But Because of these requests for admission where they
24 keep saying they won't test the formulated product, they won't
25 test surfactants, they won't do certain long-term studies,

1 Dr. Farmer prepared these charts to show all the testing that
2 occurred in those two areas.

3 So the first chart that she prepared was a genotoxicity
4 testing on the formulated product. You can see that the
5 testing on this chart started in 1992. She listed the author
6 or the study director, the year, the title, the test organism,
7 the description of the product or test substance, and whether
8 the result was positive or negative.

9 And I think one of the things that I heard this morning
10 was that they ran salmonella tests as if that was a bad thing.
11 Well, salmonella test, that's called the AIMS test. The
12 AIMS test is one of the most fundamental. It is called the
13 gold standard of genotoxicity tests.

14 So when you heard this morning some allegation that by
15 running the salmonella tests they weren't doing their job, that
16 is the gold standard in the petri dishes for determining
17 whether there's genotoxicity. And so that chart -- this chart
18 demonstrates how responsible Monsanto was with respect to its
19 testing.

20 And you can see here, this first page shows 1992 to 1999
21 on the formulated product, the combination of glyphosate and
22 surfactants. Every result was negative.

23 1999 to 1999. Look how many tests they did in 1999 alone.
24 All negative.

25 1999 to 2008. All negative.

1 2008 to 2009. All negative.

2 2010 to 2016. All negative.

3 More in 2016 all the way up until 2018. All negative.

4 They ran all these tests. They didn't stop; they ran the
5 tests.

6 And then she prepared a similar chart on the surfactants.
7 So this was just testing the surfactant. Again, tests that
8 were not required by the regulators, but they did them anyway
9 to understand the surfactants that were being used in the
10 product.

11 1981 to 2000 on this table with the same information, all
12 negative; and then 2009, negative.

13 Monsanto ran those tests and it learned from them and it
14 shared the results. It evaluated the results of its tests. It
15 provided all of the data, the underlying data, and the reports
16 to the regulators. It continued to conduct new tests. It
17 didn't stop. And it published the key studies in peer-reviewed
18 journals.

19 So we're going to talk about some of the allegations that
20 we've heard, like the Parry report. Well, when they did
21 further tests based on what Dr. Parry asked them to do, they
22 published it in the peer-reviewed journals so that the world
23 could see it and so scientists could see and review what they
24 did in those tests.

25 And you heard from Mr. Grant, the CEO. So we heard today

1 at the top (reading):

2 "And what did Mr. Grant tell you about the importance
3 of science at Monsanto? Was getting the science right
4 important to Monsanto during your tenure there?"

5 Remember, he was there for 15 years.

6 "It absolutely was.

7 "Why?

8 "Because it was everything that we stood for, and
9 sound science was the bedrock, it was the platform that we
10 operated on."

11 That is the message that was being sent from the top,
12 sound science. They did the testing. Now, that doesn't mean
13 that everyone has to agree, like, in 2015 IARC came out with
14 this decision; but to say that they didn't believe in their
15 science, of course they believed in their science. They did
16 the tests, they provided it to regulators, they stood behind
17 what they did, and they acted reasonably based on all of the
18 science.

19 You heard about Dr. Farmer. I think you heard criticisms
20 of Dr. Farmer this morning, but Dr. Farmer in e-mails
21 demonstrated what her intentions were about science.

22 And let me make a comment. Are there dumb e-mails in this
23 case? When you have produced millions of pages from years and
24 decades of multiple employees working at a company, are there
25 dumb e-mails? The answer is yes; but the overall record -- I

1 mean, they can pick 10 e-mails, or whatever she wrote on the
2 chart, 20 documents, 30 documents, out of millions of pages and
3 say that there are some bad language that they don't agree
4 with. The overall record demonstrates that this was a company
5 committed to testing and committed to science.

6 And she explained, Dr. Farmer, in detail, not only in the
7 writing but in her testimony, what she meant in this e-mail.
8 She explained her four-part strategy for the stewardship
9 program for glyphosate, which included publishing relevant
10 toxicologic, ecotoxicological and human information, reviewing
11 the literature regularly for glyphosate findings and respond
12 when appropriate.

13 I mean, we heard today somehow that they -- as if Monsanto
14 is not paying attention to the science, as if they think
15 there's no science out there. She is telling you "We are
16 reviewing the science." Now, if we disagree, if we think there
17 are limitations of a study or problems with a study, we're
18 going to respond when appropriate, but of course they're
19 reviewing the science and that's part of the reason that they
20 were doing more testing.

21 And she said (reading):

22 "We are going to establish a scientific network of
23 prestigious scientists in key world areas and provide them
24 the latest information about glyphosate. We have epi,
25 tox, environmental exposure, reproductive development, and

1 clinical toxicological experts. And then we are going to
2 assess data gaps and fund appropriate research."

3 That means they are identifying data gaps and they are
4 funding research. That is not ignoring. That is not deceit.
5 That is not lying. That is not hiding. That is a stewardship
6 program based on exactly what the message was from the top from
7 Mr. Grant: We stood for sound science, which was the bedrock.

8 And let's just talk about what we saw -- we've seen it now
9 throughout this trial. I think we saw it in Phase I. We
10 definitely saw it in Phase II. They played you the testimony
11 this morning from Dr. Reeves where he says "across the board,"
12 but what did he mean by that?

13 Because the allegation is that Monsanto is standing in
14 here saying "There's no science. There's no science." That is
15 not what he said. This is his testimony that they didn't play
16 for you this morning (reading):

17 "It's still Monsanto's position that there's no
18 evidence across the board; right?"

19 That's what the plaintiff's lawyer asked him. This was
20 his full answer (reading):

21 "Yes, our -- our position is that, when you take all
22 this data into account" -- again, he is considering all of
23 the data, he is not ignoring on behalf of the company the
24 data -- "you have a very large body of evidence saying we
25 fully understand the carcinogenic potential of glyphosate

1 and Roundup-based herbicides, or glyphosate and
2 glyphosate-based herbicides, indicating there is no
3 carcinogenic potential. There are additional studies that
4 may purport to have findings one way or the other; but
5 when you look at those in particular, they often have some
6 sort of methodological flaw that prevents either a
7 conclusive outcome or a reliable source of or from them
8 being a reliable source of information."

9 Now, again, people can disagree with that, but the
10 accusation that they are not considering the science or saying
11 there is no science, they are considering all the science and
12 they acted reasonably in doing so.

13 More evidence that Monsanto believed in the science.

14 Mr. Grant (reading):

15 "What did you learn about the safety profile of
16 glyphosate and Roundup over the course of your tenure at
17 Monsanto?

18 "Both from the work scientists within the company and
19 from the regulatory agencies around the world, that it was
20 unrivaled in its safety position."

21 And not only did they stand behind the science in their
22 testing, in their review of the science that's out there, which
23 is more than you see on this chart or more than you see, to be
24 clear, even in Phase I -- and we understand your verdict in
25 Phase I -- but there is more science that is out there,

1 including the science that the EPA reviews from Monsanto, from
2 other glyphosate manufacturers.

3 These employees stand behind Roundup, and one of the
4 reasons you know that is because they use Roundup in their own
5 yards with their children, with their pets. They do not think
6 it causes cancer or they wouldn't be using it in their --
7 themselves at their homes.

8 So what does the plaintiff argue? Well, first of all, the
9 plaintiff shows you these requests for admission, which you've
10 heard an instruction from the Court. Yes, when we were asked,
11 we admitted that certain things didn't occur, but let's talk
12 about why those things didn't occur. Let's put them in
13 context. Again, what is the full evidence?

14 So the first one is that Monsanto never conducted a
15 long-term animal carcinogenicity study on any glyphosate
16 formulation. So the formulated product.

17 And the second really goes along with it: Admit that
18 Monsanto never conducted a long-term animal carcinogenicity
19 study on any surfactant used in a glyphosate-formulated
20 product.

21 So this is -- they are now saying despite all the testing
22 that occurred, they are complaining because we didn't run a
23 two-year test on a certain rat or a certain mouse with the
24 formulated product or a surfactant, but you heard multiple
25 witnesses explain why that didn't happen.

1 First of all, all of the other animal testing demonstrated
2 to them that there was no carcinogenicity and that it wasn't
3 necessary.

4 But, second of all, it's just basic. If you feed mice or
5 rats as much soap as you can, because all of the surfactants,
6 whether it's in the formulated product or by itself, if you
7 feed them as much soap as you can for two years, first of all,
8 they probably can't survive; and even if they do, you can't
9 read the results. It's not because it's causing cancer, to be
10 clear. It's because it's interfering with the mice and the
11 rats, with their systems.

12 And so that is the reason why these studies were never
13 conducted along with all of the other studies that were
14 conducted that showed no carcinogenicity or genotoxicity.

15 Then there is: Admit that Monsanto has not conducted a
16 long-term animal carcinogenicity study on glyphosate since
17 1991. Well, Monsanto conducted three studies before 1991. The
18 EPA reviewed those studies and the EPA has repeatedly -- and
19 I'm going to talk to you about the EPA -- repeatedly found no
20 carcinogenicity time and time and time again.

21 And then what's the last allegation that we heard? And we
22 heard this morning, "Well, they should spend the money. They
23 should spend the money." Admit that Monsanto has never
24 conducted an epidemiological study to study the association
25 between glyphosate-containing formulations and non-Hodgkin's

1 lymphoma. That is true.

2 But let's just acknowledge what would have happened if
3 Monsanto had conducted such a study, like a 20-year study, like
4 the Agricultural Health Study by the National Cancer Institute.
5 They would stand up here and say anything we did was invalid.
6 They did it this morning. They showed you articles and how
7 they were cited, like the Williams article, and they say, "It's
8 invalid. You shouldn't consider it because Monsanto was
9 involved."

10 So what's Monsanto supposed to do? If we do a study and
11 it shows no carcinogenicity, we're at fault. We should have
12 done more. If we don't do a study, we're at fault.

13 Well, that is not a proper allegation about being
14 unreasonable. Monsanto was reasonable in every single respect
15 in its testing.

16 And what is the evidence about regulators? Because you
17 heard from Mr. Grant and others that I just showed you that it
18 wasn't -- Monsanto stood behind its science, but Monsanto also
19 learned from what the regulators were saying about all of the
20 science that was out there.

21 From 1975 to 2012 -- and here I'm stopping at 2012 because
22 you've heard 1986 to 2012 is the key time period, that's when
23 Mr. Hardeman was using Roundup -- the EPA who had these powers
24 did not suspend the product, did not remove the product, did
25 not require a warning about non-Hodgkin's lymphoma or cancer.

1 It could have done any of those things and based on the
2 science, the EPA did not do so across multiple administrations.
3 No matter the politics, it did not do so.

4 And when we hear about this IBT allegation, again, the EPA
5 didn't come and say "You need to pull the product." This IBT,
6 I think we heard it was a -- I forgot the exact word, but some
7 sort of conspiracy today or something. I mean, Monsanto was
8 one of numerous companies that were defrauded by a third party
9 who was conducting tests; and when Monsanto learned about it,
10 Monsanto ran more tests and those tests showed no
11 carcinogenicity, just like all of the tests that I showed you
12 before.

13 So as of 2012, that important time period, no one in the
14 outside world said glyphosate caused cancer, not a single
15 regulatory body anywhere in the world. So not just the EPA,
16 but Europe, Canada, Australia, anywhere else.

17 And no health organization. Not the National Institutes
18 of Health, not even the World Health Organization, no one said,
19 based on that science that's on that chart that you were shown
20 repeatedly this morning, that glyphosate caused cancer or that
21 Roundup caused cancer.

22 And that you are allowed to consider in Phase II because
23 it goes directly to Monsanto's state of mind and whether they
24 acted reasonably based on the science.

25 So who are the world regulators and what did they do when

1 they looked at the science? And I've listed here some of the
2 world regulators that you've heard about from witnesses,
3 Monsanto witnesses, who reviewed that extensive glyphosate
4 database, all of the testing, and made determinations. The
5 EPA; EFSA and ECHA, which are the two European organizations;
6 Health Canada in Canada; Australia; Japan.

7 They all had teams of highly qualified experts. I mean,
8 they're -- let's be clear, you didn't hear from them but there
9 are real doctors and real scientists who care about the safety
10 of the public working at all of these organizations around the
11 world. They have diverse experience. So they have
12 epidemiologists. They have toxicologists. They have
13 biochemists. They have everything who are reviewing this data.

14 They examined Monsanto's data; but if -- maybe they say
15 "We don't want Monsanto's data." Well, they reviewed the data
16 from other manufacturers that Monsanto had nothing to do with.
17 So the non-Monsanto data. And then they reviewed independent
18 data that had nothing to do with any company that was just run
19 by people who conducted some of the studies that you heard in
20 Phase I. And from 1975 when the product was first on the
21 market through today, they have consistently said that Roundup
22 or glyphosate is not carcinogenic.

23 Who works at the EPA? Because you heard this as well, and
24 I just mentioned it. Toxicologists, chemists, pathologists,
25 epidemiologists, biologists, other scientific experts who are

1 involved in these reviews. And to be clear, not just at the
2 EPA, but in Europe, in Health Canada, in Australia, in Japan.

3 Here is the 1993 reregistration eligibility team when they
4 were looking at 1975 to make sure in 1993 what the science
5 said, and you can see all the different branches. It's hard to
6 see because it's little on the left, but it even names all the
7 different doctors who were involved in this review. You can
8 read it. Special Review and Reregistration Team, Health
9 Effects Team, Biological and Economic Analysis Division,
10 Pesticides and Toxic Substances Division.

11 These are real scientists who are looking at the safety of
12 glyphosate and telling Monsanto "We have looked at the data and
13 we do not think there is carcinogenicity."

14 So you have seen a series of documents. I have shown them
15 to you in opening here in Phase Two. I won't belabor them.
16 But in 1993, in that reregistration eligibility decision, which
17 was sometimes referred to as RED, the Agency classified
18 glyphosate as a Group E carcinogen, non-carcinogenicity to
19 humans.

20 And I say that Monsanto was informed by the reviews.
21 Well, here is the testimony to show that they were reasonable
22 based on the science. When you say the EPA's reregistration
23 decision helped inform Monsanto's views that glyphosate and
24 glyphosate products did not cause cancer, how did it do that?
25 Explain that.

1 In here -- and she is talking about the documents I just
2 showed you. In here they talk about their decision on the
3 carcinogenicity evaluation of glyphosate.

4 And did they have scientists who reviewed the same tests
5 that Monsanto had performed?

6 Yes.

7 Did they come to the conclusion that glyphosate is not
8 genotoxic?

9 Yes.

10 Did they -- what else did they conclude with respect to
11 glyphosate as it relates to whether or not it causes cancer?

12 They put it into Group E, which is evidence of
13 non-carcinogenicity.

14 In 1998 the EPA came to the same conclusion. It was a
15 Group E pesticide, no evidence for carcinogenicity in two
16 acceptable species, which was based on both mice studies and
17 rat studies. And as I have said, it wasn't just the EPA here
18 in the United States.

19 Europe, no evidence of carcinogenicity.

20 The World Health Organization and a division of the United
21 Nations, glyphosate is unlikely to be genotoxic. In view of
22 the absence of a carcinogenic potential in animals and the lack
23 of genotoxicity in standard tests, the Meeting concluded that
24 glyphosate is unlikely to pose a carcinogenic risk to humans.

25 This is in 2004, based on all of the science.

1 And even Dr. Portier had to admit that he, himself -- he
2 was working at the National Toxicology Program for the United
3 States government -- he was responsible as a group -- as part
4 of a group of scientists for finding the causes of cancer. And
5 while he was there, before he was a paid Plaintiff's expert, he
6 never said that Roundup or glyphosate caused cancer.

7 And he admitted that the same statement would be accurate
8 as to 2013. That as of 2013, agencies you know of that have
9 reviewed glyphosate prior to 2013 -- again, that key period is
10 1986 to 2012 -- their findings were not carcinogenic.

11 Yes.

12 So this is their expert admitting that no agency in the
13 world based on all of the science before 2012 thought Roundup
14 was carcinogenic, and yet the allegation here is that Monsanto
15 was basically involved in criminal behavior for not warning
16 that Roundup cause -- is carcinogenic.

17 Then Dr. Portier, once he was an expert, once IARC came
18 out, he went out and tried to petition organizations --
19 regulators around the world that his opinions, which you heard
20 in Phase One, are right and they are wrong. But what did they
21 say? This is from Phase One. EFSA, the European Food Safety
22 Authority, they reviewed all of his arguments, even more
23 arguments than he made on the video that you saw.

24 They said glyphosate is unlikely to be genotoxic.

25 And then they wrote back and they say EFSA considers that

1 the arguments brought forward in the open letter -- the open
2 letter he wrote to them with all of his concerns -- do not have
3 an impact on the EFSA conclusion on glyphosate.

4 And he testified this was true of the EPA too. He tried
5 to petition them. They reviewed all of his criticisms, and
6 they said glyphosate is not carcinogenic.

7 And then you saw this morning, we played for you a
8 two-minute clip of Dr. Portier once again. But the date here
9 is key. In December of 2018 -- so, what, three months ago --
10 the EPA once again -- now IARC has occurred. Now there is a
11 lot of attention on Roundup and glyphosate. And the EPA is
12 reviewing the science, and this is what the EPA said just three
13 months ago: EPA is confident in its conclusions that
14 glyphosate is not likely to be carcinogenic to humans. They
15 are confident in their conclusion.

16 Again, how did the worldwide regulators impact Monsanto,
17 and was Monsanto -- and I said this in opening. Monsanto takes
18 responsibility. Monsanto is not hiding behind EPA. Monsanto
19 is not hiding behind regulators, but it is still relevant what
20 regulators who were also independently looking at the science
21 and have a duty to the public, what are they telling Monsanto.

22 And this is what Mr. Grant told you yesterday. It is our
23 conclusion that Roundup does not cause cancer. But more
24 importantly, in the regulatory jurisdictions around the world,
25 in the U.S., in Canada, in Japan, in Europe, with the German

1 rapporteurs, it has been their conclusion for the last 40
2 years -- and that's the point I was trying to make earlier --
3 it's -- this is a conclusion that's validated by scientific
4 evaluation.

5 So we are a science-based company, and the regulators are
6 looking at the science at that time, and that is their
7 conclusion also. So what was known and knowable to the company
8 and to the regulators shows that Monsanto was acting
9 reasonably.

10 And Monsanto and the regulators were informed by the
11 science. So I'm not here to re-litigate Phase One. Again, no
12 one has any questions about how seriously you took Phase One.
13 But at the same time, they are looking at the science time and
14 time and time again.

15 And these two pie charts, to be clear, are not in dispute.
16 This is what the AHS showed. Maybe AHS in your opinion had
17 flaws, but the AHS showed that the NHL rates -- the rates of
18 non-Hodgkin's lymphoma in people who were -- the 44,000 people
19 who were using glyphosate as compared to just the regular
20 general population, were exactly the same: 1 percent. And it
21 is data like this that was informing Monsanto, and it was the
22 data like this, along with everything else, that was informing
23 the regulators.

24 So up to today has any evidence been brought to you that a
25 single regulator, anywhere in the world -- maybe you don't like

1 the EPA, but what about Health Canada? What about Europe?
2 What about Australia? What about Japan? What about anywhere
3 else in the world? Has any regulator said glyphosate or
4 Roundup is carcinogenic? No. Because there is no evidence.
5 The answer to that question is no, no regulator has said that.

6 Has any regulator in the world said that Roundup should be
7 sold in their country with a cancer warning? No. Nowhere in
8 the world has that occurred. And that is what demonstrates the
9 reasonableness of Monsanto.

10 So this is what you heard was going to occur in opening.
11 In opening we are supposed to present to you what the evidence
12 will show, and the Plaintiff, who has the burden, said this to
13 you -- this is a direct quote from opening -- you are going to
14 learn that Monsanto had a cozy relationship with a couple of
15 people, long-term EPA employees. You are going to hear
16 testimony about that.

17 You heard no testimony about that. I think there was a
18 reference this morning to text messages. There was no evidence
19 whatsoever of a cozy relationship with a couple of long-term
20 employees at the EPA because that evidence is not there.

21 And I talked to you at the outset this morning. And I
22 hope you know that from Phase One and Phase Two we have
23 presented the full stories for you today. Sorry, for a month,
24 not just today.

25 But these are the four things that the Plaintiffs continue

1 to rely on -- really the first three. We will talk about the
2 fourth. They walked through all of these things today, and now
3 I want to walk through what they presented in this trial and
4 what the rest of the story was.

5 So let's start with the Knezevich tumor, this magic tumor
6 that you supposedly heard about today. Here is what they
7 presented to you when they presented the evidence. They told
8 you that Monsanto submitted a mouse study to EPA. They told
9 you that the EPA panel considered making it a Group C
10 classification. They told you that the EPA asked for more
11 information. They told you that Monsanto hired Dr. Kushner to
12 review the slides.

13 Here is what we had to present to you. They didn't
14 present this. We presented it. EPA held more discussion and
15 held a public meeting. Monsanto conducted a new study on rats;
16 and based on that study, EPA determined that glyphosate was not
17 carcinogenic.

18 Here is the document -- that they didn't present to you
19 that we had to present to you -- in 1990 that shows that --
20 where the EPA was considering the study that Monsanto conducted
21 using certain types of rats for two years, and the Agency
22 concluded that these adenomas -- so these tumors -- were not
23 treatment related and glyphosate was not considered to be
24 carcinogenic in this study.

25 And here was the EPA's ultimate conclusion in 1991:

1 Glyphosate should be classified as a Group E, evidence of
2 non-carcinogenicity for humans, based on lack of convincing
3 carcinogenicity evidence. That is the full story about the
4 *Knezevich* study.

5 What about Dr. Parry's recommendations? Because we heard
6 half the story again today. This is the story that they
7 presented to you in this trial. This is the story that they
8 presented to you today. Dr. Parry reviewed the genotoxicity
9 studies, four genotoxicity studies. He found possible
10 genotoxicity. He made recommendations.

11 Well, what is the story that we had to present to you so
12 that you had all of the evidence? Monsanto, based on
13 Dr. Parry's recommendations, conducted further tests. Monsanto
14 shared the results with Dr. Parry. Monsanto published the
15 results of its tests in a peer-reviewed journal. And Dr. Parry
16 agreed, based on those tests, that Roundup or glyphosate was
17 not carcinogenic. We had to present that to you. They had the
18 burden.

19 Here, you will recall this document. I think they said, I
20 might show you this document. I'm going to show you this
21 document. Let's walk through the recommendations that
22 Dr. Parry made and then Dr. Farmer testified what happened in
23 response to each document.

24 I think today they showed you something that said there
25 was a dumb e-mail that said, We are not going to run the tests.

1 Well, guess what? Despite that e-mail in 1999, they responded
2 to every single one of Dr. Parry's recommendations. This was A
3 and B, about providing more data.

4 They provided the data, you will recall, that showed --
5 Dr. Farmer showed you this -- all of the tests they provided to
6 Dr. Parry so he could evaluate everything, and you will even
7 recall that Dr. Parry was happy because Monsanto had already
8 started some of the tests, unbeknownst to him, before his
9 recommendations.

10 Here, he recommended evaluating oxidative damage. They
11 showed him the studies that evaluated oxidative damage. Here
12 he said to perform an in vivo bone marrow micronuclei assay.
13 They showed him the study where that occurred.

14 In this one, the next one, he made no recommendations. He
15 raised some issues but there was no recommendation, so there
16 was nothing for them to do.

17 In this one you remember there was testimony about the
18 comet assay, and Dr. Farmer walked you through this. In
19 response to this recommendation, exactly what they provided to
20 Dr. Parry, including, you will see down here, Heydens and
21 Holtz -- so the third bullet and the fifth bullet and actually
22 the fourth bullet -- those were Monsanto's studies that they
23 conducted and then provided the data about genotoxicity to
24 Dr. Parry.

25 And then this next recommendation, G, he said, I do not

1 recommend any transgenic point mutation assays at this time.
2 There was nothing to do there.

3 H, he didn't recommend any studies of DNA.

4 Adduct induction, there was nothing to do there.

5 And then he wanted to be provided with comprehensive in
6 vitro data on the surfactants, so they gave him the in vitro
7 data and the in vivo data. That, you can see all showed
8 negative for genotoxicity.

9 And after Dr. Parry looked at Monsanto's responses to all
10 of his recommendations, what did he say? Well, first of all,
11 here is another promise that was made to you in opening
12 statement by the Plaintiff with the burden. This is what you
13 were told you would hear in Phase Two.

14 However, in the second paper where Dr. Parry concludes
15 that glyphosate is a potential clastogenic in vitro, and that
16 means it is an agent that can induce mutation by disrupting or
17 damaging chromosomes. So he didn't change his position.

18 Well, he did change his position because you heard
19 testimony about this document that we presented. We presented
20 it.

21 In 2001 Dr. Parry accepted that glyphosate is not
22 genotoxic. And in 2001 he said he no longer required any
23 studies on the final formulation. That's the full story about
24 Dr. Parry.

25 These are two of the things that we probably heard about,

1 the mouse study and the Parry -- and the Parry data for 30
2 minutes this morning to argue why not only is Monsanto liable
3 but should be penalized for punitive damages. They didn't
4 present to you the full story. We did.

5 **THE COURT:** Mr. Stekloff, can I ask -- I want to take
6 a quick break just to make sure -- there is an issue I want to
7 discuss with the parties outside the presence of the jury. Why
8 don't we take a five-minute break. We will be back at about 15
9 after the hour.

10 (Proceedings were heard out of presence of the jury:)

11 **THE COURT:** So the issue I want to discuss is -- I
12 meant to bring this up after the opening -- after the closing
13 arguments in Phase One and I forgot to. I want to warn
14 Plaintiff's counsel to be careful not to act -- not to react
15 with theatrical facial expressions in response to arguments
16 that Mr. Stekloff is making.

17 **MS. MOORE:** Okay.

18 **THE COURT:** That happened a lot during closing
19 arguments in Phase One, and it was not appropriate; and it is
20 not appropriate now.

21 **MS. MOORE:** Okay. I apologize, Your Honor.

22 **THE COURT:** Why don't we come back in a couple
23 minutes. Okay.

24 **MS. MOORE:** Thank you, Your Honor.

25 **THE CLERK:** Court is in recess.

(Recess taken at 11:11 a.m.)

(Proceedings resumed at 11:15 a.m.)

THE COURT: Okay. Bring the jury back in.

(Proceedings were heard in the presence of the jury:)

THE COURT: Okay. Sorry about that interruption.

Mr. Stekloff, you can resume.

MR. STEKLOFF: Thank you, Your Honor.

So we were walking through what we spent, I think, the majority of this morning on: The magic tumor, the Knezevich tumor, and then Dr. Parry's recommendations. But then we also heard about ghostwriting. So that's what the Plaintiff told you. Again, half the story. Well, what was the full story?

First of all, in the *Williams* 2000 paper, Monsanto's role was disclosed. And, again, what is the purpose behind disclosing Monsanto's role or not disclosing it in a paper? It is so people who are reading the paper can say This is what I think. I don't really trust it because Monsanto is involved, or maybe I do trust it because Monsanto is involved. It is their product.

But here it makes very clear that the toxicologists and other scientists at Monsanto made significant contributions to the development of exposure assessments and through many other discussions related to the paper. And then it laid out people, including Dr. Heydens and Dr. Farmer, who were involved in those discussions.

1 Now, there was another paper, the Mink paper, that, again,
2 you were shown. It was written on the paper. You should
3 consider this study. Well, I agree. Go back and look at the
4 Mink paper. Go back and look at that exhibit, Exhibit -- well,
5 this is an e-mail, Exhibit 466. Go back and look at what was
6 done in the Mink paper.

7 First of all, Dr. Farmer testified about this. The
8 question was: I don't really want to get into that substance.
9 I just want to validate that you wrote these things. You wrote
10 that paragraph under the introduction glyphosate acid is
11 typically -- you see that?

12 And her answer was: Again, I think it's important that we
13 do take the context because Dr. Williams and Dr. DeSesso are
14 not familiar with the constituents of the product, so the minor
15 edits that I did was to help give a little bit of context to
16 the formulated product.

17 And when you look at that paper -- when you look at that
18 exhibit -- papers are laid out. There is an introduction.
19 Then there is often the methods that the scientists use to
20 conduct whatever study they were conducting. And then there is
21 a discussion of their results, and then there oftentimes is
22 some sort of conclusion. That's how papers are typically laid
23 out.

24 Well, if you look at that paper -- and it is a long
25 paper -- after the introduction where she gave the context that

1 she explained, there was no edit from Dr. Farmer to the method
2 section that the scientists choose. There was no edit to the
3 result section that discussed the results of their study.
4 There were no edits to the author's discussion of the science
5 that they were reporting.

6 She moved words around in the introduction, and she
7 provided context and information for the introduction because,
8 as she said, they don't have all of the context about
9 Roundup-formulated products because they don't -- those
10 scientists who wrote that paper don't work at Monsanto.

11 So what was the last thing -- we actually didn't hear
12 about this morning, but there was a big focus on it at trial.
13 You might remember that there was an e-mail from Dr. Farmer
14 where she -- you can see the e-mail, says: Here is their
15 bottom line. How do we combat this?

16 Do you have to love the word combat? No. But she
17 provided context for exactly what she meant when she was
18 combating this statement to avoid carcinogenic herbicides in
19 foods by supporting organic agriculture and on lawns by using
20 nontoxic land care strategies that rely on soil health, not
21 toxic herbicides.

22 What you may remember from the trial is that this e-mail
23 where Plaintiffs were presenting their evidence was shown to
24 Dr. Reeves. And Dr. Reeves was asked: Do you agree with what
25 characterization here? What do you think about this word

1 combat? What do you think about it?

2 Well, what you need to know is that we showed you the
3 testimony from Dr. Farmer about this. I don't know if it was
4 always clear who was showing you what in the depositions when
5 they were shown consecutively. They weren't going to show you
6 what Dr. Farmer said about the e-mail she wrote. We had to
7 play that for you, so you had the full story.

8 And here is what she testified when asked. They didn't
9 want you to hear this: Why would you want to combat that
10 sentence?

11 Well, first of all, in relationship to glyphosate, it was
12 not a carcinogen. And I think that's really important that
13 people understand that herbicides -- dose makes the poison --
14 that's what you heard from Dr. Ritz -- so you have to look at
15 this, that glyphosate was not carcinogenic. I don't want
16 people to be misled that all these herbicides are carcinogenics
17 and that everything that is used out there is organic is
18 nontoxic.

19 You can agree or disagree with that, but we presented the
20 full story to you about what she meant in this e-mail, and
21 that's what you should demand, is that the full story is given.

22 And here is another example because it happened to him
23 this morning. This e-mail is taken out of context. This is in
24 2003. She writes, For example, you cannot say that Roundup is
25 not a carcinogen.

1 But I showed you this in opening. This is actually what a
2 responsible scientist does. She was saying you can't say
3 Roundup is not a carcinogen based on all of the testing. We
4 can make that statement about glyphosate and can infer that
5 there is no reason to believe that Roundup would cause cancer.

6 This is the full e-mail, not just some snippet that is
7 cherry-picked that is trying to mislead you into Monsanto's
8 behavior or whether they were reasonable. And I actually want
9 to show you something that happened -- I don't have a slide on
10 it because I didn't expect it to happen, but it happened this
11 morning.

12 Ms. Melen, can I please have the ELMO?

13 This is one of the e-mails that you were shown that was
14 written on the chart that you should consider. It was an
15 e-mail from Dr. Heydens. And hopefully you recall this.

16 What I want to show you is The good 'ol Monsanto way of
17 doing things. Give people --

18 Now, when you were shown this on one of the slides in
19 Plaintiff's closing this morning, just an hour ago, it said the
20 good 'ol Monsanto way of doing things. It was a little image
21 on the top left of a slide. Give people, and it had four
22 dollar signs. That is what you were shown to try to convince
23 you why you should find Monsanto liable. This is what the
24 e-mail actually says.

25 Monsanto people who are responsible for dissemination and

1 coordination of scientific information within and outside of
2 Monsanto. This was part of his elements of a network plan
3 include but not are not necessarily limited to by Dr. Heydens,
4 1999. They will also play a role in establishing and managing
5 relationships with outside experts. Some of these will be
6 full-time dedicated headcount and some will be part-time. The
7 good 'ol Monsanto way of doing things, give people an extra
8 job. Not money, an extra job.

9 Initially Jerry talked about adding four full-time people
10 to Europe for this role and one in St. Louis. I don't know if
11 this has changed. It is my understanding that Ariane Redding
12 will have an overall coordination role for Western Europe.

13 I think we heard the word "offensive." It is offensive to
14 misquote and put on a slide The good 'ol Monsanto way of doing
15 things, give people money, when this is what the document says.
16 That is offensive.

17 Can I please turn back? Thank you.

18 Monsanto acted reasonably. Mr. Hardeman used the product
19 from 1986 to 2012, but from 1975 to today the EPA has never
20 required a warning based on all of the science. Every other
21 regulator in the world from 1975 to today, the same is true.
22 They have not required a warning. And this is the evidence
23 that answers the questions about whether there was a design
24 defect or whether Monsanto failed to warn.

25 So what is the second question that I want to talk about?

1 What did Plaintiff prove about the label? Because, then again,
2 there is no dispute the Plaintiff has the burden.

3 What are some of the questions that the Plaintiff never
4 answered for you in Phase Two? What did the Roundup label say?
5 The Roundup label that was on the product that Mr. Hardeman was
6 using from 1986 to 2012, what did it say? What should the
7 label have said?

8 They are saying there should have been a cancer warning,
9 but what should it have said? Because, as you know, the
10 science changes. The science evolves. The science is
11 complicated.

12 Again, not challenging in any way the decision you made in
13 Phase One, but that doesn't mean that they can just come in and
14 say there should have been a cancer warning.

15 When should Monsanto have added that warning? He used it
16 from 1986 to 2012. They haven't presented any evidence to you
17 about when a warning should have been added.

18 And it was the EPA who was responsible ultimately to say
19 whether something should go into any warning on the Roundup
20 label. Monsanto is responsible for putting it in, but the EPA
21 has to approve it. Would the EPA have approved whatever it is,
22 hypothetically, that they say should have gone on the label?
23 They presented no evidence to you on this. Literally zero.
24 And they brought you no expert to talk about this.

25 They have the burden.

1 And then I just briefly want to talk about whether
2 Mr. Hardeman would have even read a different label if it had
3 taken place because this is what the evidence showed about
4 Mr. Hardeman reading the label.

5 When he first testified in his deposition -- and I had to
6 confront him with this, you might recall -- this is what he
7 said about reading the label under oath: I don't know -- I --
8 I believe at one time when I -- and didn't every time I bought
9 a thing of Roundup, I didn't read. I don't know if they
10 updated it or not. I mean, when I originally got the -- you
11 know, the product in the -- earlier, I may have read it once.

12 So since 1986 he may have read it once.

13 So I didn't -- so I knew it so I didn't need to reread it
14 again at any point after 1986 so I don't know.

15 Now, later in his deposition under oath, he did say this:
16 So you read the label the first time in 1986, but you didn't
17 read it after that? And your answer was --

18 And he said: I may have looked at it again in West Side.
19 I -- quickly I don't know.

20 That's 1988 when he moves to that 56-acre property.

21 He says: I may have looked at it again. I don't know.
22 It is possible I looked at it again in West Side, you know,
23 after that time.

24 So you would have looked at it, so just so --

25 Maybe one other time. I mean, it's been -- it's been --

1 there is no need for me to keep looking at it again. You know,
2 you know, your whatever and -- you know the conditions and the
3 whatever you need to spray it under, and I was familiar with
4 that and that's how I, you know, used it.

5 And in every claim that you have to find the elements, one
6 of the elements is that a different label would have been a
7 factor in Mr. Hardeman developing cancer, and that is directly
8 what this goes to because there is no evidence that he would
9 have read the warning. Even if one had occurred, even if you
10 think one was necessary, even if you think the company was
11 unreasonable, who knows what it would have said, who knows what
12 it would have been -- when it would have been put on. They
13 didn't present any evidence of that. But they also can't get
14 around this testimony from Mr. Hardeman.

15 And I asked Mr. Hardeman about other labels because we
16 heard he used other products that a reasonable person would
17 have maybe wanted to look at the labels and see what they said,
18 and his testimony was he didn't know what the labels said for
19 these other products: Ant spray, wasp spray, gasoline, paint.
20 That was his testimony.

21 So I want to stop there because if you say no to the first
22 three questions, that they didn't prove that Monsanto was
23 unreasonable, that they didn't prove that Monsanto should have
24 warned based on all of the science, based on what every
25 regulator and what every health agency was saying between 1986

1 and 2012, and frankly up until today, then you are done. You
2 only get to damages if you answer yes to one of those three
3 questions.

4 So I want to talk to you briefly about damages because
5 there are two types of damages. There are compensatory damages
6 that you heard about from His Honor during the instructions and
7 there are punitive damages.

8 I think I heard today They didn't cross-examine
9 Dr. Nabhan. They didn't challenge compensatory damages.
10 That's right, we didn't cross Dr. Nabhan. I told you in the
11 opening for Phase Two we weren't going to challenge how
12 difficult and unfortunate it was that Mr. Hardeman suffered
13 from non-Hodgkin's lymphoma and what he went through. I'm not
14 standing here challenging that this morning.

15 We stipulated to the amount of his medical records. We
16 agreed that his medical costs up through, I think, late 2018
17 when we had the records, were approximately \$200,000. It is in
18 the instructions. It is on the verdict form.

19 But you only give that if you find that Monsanto acted
20 unreasonable.

21 And one of the instructions that His Honor read to you --
22 one of the first ones -- Instruction Number 1 reads in part:
23 You must follow the law as I give it to you whether you agree
24 with it or not. And you must not be influenced by any personal
25 likes or dislikes, opinions, prejudices, or sympathies. You

1 will recall that you took an oath to do so.

2 And that's important because all of us feel sympathy for
3 Mr. Hardeman. And I told you in opening this is not a
4 popularity contest.

5 But you need to make your decision based on the evidence,
6 based on the full story, based on all of the evidence. And if
7 someone in that room says, Look, I feel sympathetic for
8 Mr. Hardeman and we have a huge company over there, the rest of
9 you need to say, That's not what we are here to discuss. We
10 are here to discuss did Mr. Hardeman prove that Monsanto acted
11 unreasonably. Did they meet their burden to prove that
12 Monsanto should have warned, based on all of the science, based
13 on what they were hearing from the regulators?

14 All of you -- some of you when we were in jury selection,
15 we discussed, could go back and vote -- tell your colleagues,
16 tell your friends you voted for Monsanto. You don't have to
17 like Monsanto. You don't have to think that every single thing
18 in every single e-mail was perfectly written. You can think
19 there were things that were just dumb, but that doesn't mean
20 they have met their burden.

21 And all of you said, when I asked you whether you could
22 vote for Monsanto if they didn't meet their burden, every
23 single one of you -- and I'm grateful for it -- raised your
24 hand and said yes.

25 So let's talk for a moment about punitive damages.

1 First of all, the standard for punitive damages is higher.
2 It is not that -- I'm not going to go over the burden thing
3 again, but they started here regardless. It is not a feather.
4 But the standard for punitive damages is not preponderance of
5 the evidence. It is clear and convincing.

6 So there is beyond a reasonable doubt in criminal cases,
7 clear and convincing -- which is right below it -- and then
8 preponderance of the evidence, which is what applies to the
9 claims, except for punitive damages. And they have to prove
10 punitive damages by clear and convincing evidence, and you will
11 have the definition of that.

12 You will also have the definition of what punitive damages
13 are. I think you are going to read that there had to be malice
14 and oppression and basically despicable conduct. So what is
15 it -- and we heard it this morning, based on Parry, based on
16 the magic tumor, based on ghostwriting -- was despicable? They
17 are -- you heard from ten Monsanto employees. They said we
18 didn't bring anyone in here.

19 These people all sat and were asked any question that they
20 wanted to ask for days and days and hours and hours upon hours
21 of depositions. They all came in here and they testified.
22 That testimony by video you can consider the exact same way as
23 a person sitting on -- live. The Judge has instructed you
24 that.

25 Well, what are they really asking you to believe about the

1 employees of Monsanto when they ask for punitive damages? They
2 are asking you to believe that these people who work in
3 St. Louis, in their homes, eat breakfast, feed their kids, take
4 them to school, and then drive to Monsanto and say, You know
5 what, we are going to engage in a conspiracy to give people
6 cancer. We are going to go into Monsanto and cause people to
7 get cancer. That's what they are asking you to believe, and
8 that's outrageous.

9 These people believe in the safety of Roundup. These
10 people believe in the safety of glyphosate. These people have
11 done the testing; provided the data to the regulators, and the
12 regulators and Monsanto have said that Roundup and glyphosate
13 are not carcinogenic. And for them to stand up here and say
14 the things that they said about these people is offensive.

15 These people are highly credentialed. You heard their
16 backgrounds. We had to play that for you too. We had to play
17 their education for them. We had to play where they worked
18 before. We had to play how long and how seriously they took
19 their responsibilities at Monsanto.

20 And it is not just -- it is Monsanto that is on trial, but
21 to really believe punitive damages, to believe what they are
22 telling you here, you have to believe that every one of these
23 organizations is also just out there lying about glyphosate and
24 Roundup.

25 The EPA, Health Canada, Australia, Japan, the European

1 Union, the National Cancer Institute -- when they do the
2 Agricultural Health Study -- the National Institutes of Health
3 that supports that Agricultural Health Study, the United
4 Nations, and the World Health Organization, you have to believe
5 that all of these people are lying to the public about the
6 safety and the non-carcinogenicity of Roundup and glyphosate.
7 And that is just not the case.

8 Punitive damages, which you shouldn't even get to, but
9 punitive damages are not warranted here.

10 And how do you know that? Again, it is the testing. It
11 is what the company did. For years and decades of so many
12 different types of testing. This is the evidence before 2012,
13 which you will look in the instructions is the key period you
14 need to look at.

15 1991, 1993, 1998 EPA, noncarcinogenic, noncarcinogenic, no
16 evidence of non-carcinogenicity.

17 Europe, no evidence of carcinogenicity in 2002.

18 World Health Organization and United Nations in 2004,
19 unlikely to pose a carcinogenic risk to humans.

20 And did it stop there, even after IARC made the
21 determination it made? No. You have seen this evidence as
22 well.

23 2016, Europe, unlikely to be genotoxic, does not support a
24 classification of carcinogenicity for glyphosate.

25 December 2018, EPA is confident in its conclusion that

1 glyphosate is not likely to be carcinogenic to humans.

2 There is one more instruction that I want to read for you.
3 And, again, there is no one in this courtroom who doubts how
4 seriously -- based on the deliberations -- we don't know what
5 was said back there, but the length and the seriousness of your
6 deliberations that you took in Phase One.

7 The Judge informed you, of course you need to listen to
8 each other. Do not be unwilling to change your opinion if the
9 discussion persuades you that you should. But also this is the
10 law: Do not come to a decision simply because other jurors
11 think it is right or change an honest belief about the weight
12 and effect of the evidence simply to reach a verdict.

13 We know that when you go back to discuss the evidence, the
14 full story, that is what you will do. So the last thing I want
15 to talk to you about -- and I thank you. You have heard a lot
16 from me over the last month -- this is the last you are going
17 to hear from me.

18 As I said before, this is really hard for lawyers not to
19 have the last word, but Ms. Moore gets the last word because
20 they have the burden. They have the burden to tell you the
21 full story.

22 But what are the things that they want you to ignore? You
23 should demand answers to these things.

24 They want you to ignore the decades of Monsanto testing on
25 the glyphosate, surfactants, the formulated product, animal

1 studies, genotoxicity studies, human exposure studies. I mean,
2 again, that is quite a conspiracy to run all of those tests if
3 you are trying to hide something that you believe causes
4 cancer.

5 They want you to ignore that worldwide regulators -- not
6 just the EPA, but every regulator around the world has -- that
7 has looked at this issue has confirmed that Roundup is not
8 carcinogenic, from 1975 through today.

9 They want you to ignore that those same worldwide
10 regulators have not required a warning.

11 They want you to ignore that they presented to you no
12 evidence of when a warning should have been added.

13 They want you to ignore that they didn't bring you an
14 expert on when a warning should have been given or what the
15 warning should have said. They have the burden. Their experts
16 didn't talk about these things. They could have brought you
17 such an expert.

18 And they want you to ignore those Monsanto employees, they
19 are claiming, believe that Roundup causes cancer and are trying
20 to -- and they are trying to give cancer to people, that those
21 same employees believe that but yet use Roundup at their home
22 with their families. It is not the case.

23 So the fact that you have come to a determination on
24 Phase One does not answer the question on Phase Two. What all
25 of the evidence shows, when you don't cherrypick evidence, when

1 you don't mislead about evidence, is that Monsanto was
2 reasonable. Monsanto believed in the science. Monsanto
3 followed the regulators. Monsanto took responsibility and did
4 the testing. And so those questions to 1, 2 and 3 are no.

5 So, again, I cannot thank you enough for the attention you
6 have given and the seriousness you have given. And so I now
7 leave it in your hands.

8 Thank you.

9 **THE COURT:** Okay. Ms. Moore.

10 **MS. MOORE:** Thank you, Your Honor. Do you mind if I
11 just put my phone on so I will watch my time myself?

12 **THE COURT:** Sure.

13 **MS. MOORE:** Thank you.

14 **REBUTTAL ARGUMENT**

15 **THE COURT:** You have 15 minutes.

16 **MS. MOORE:** Thank you, Your Honor.

17 Ladies and gentlemen, I want to respond to a few things
18 that Mr. Stekloff mentioned, and I want to kind of work
19 backwards. He spent a lot of time on his closing argument on
20 EPA and the regulatory bodies, and I want to be really clear
21 about this: EPA's decision is about glyphosate. Regulatory
22 look at glyphosate, not Roundup, not the formulated product.
23 That is a key difference.

24 We saw in the e-mails -- it is Exhibits 245 and 426 --
25 Donna Farmer says: We cannot say Roundup -- Roundup -- is not

1 a carcinogen. We have not done the testing.

2 That is what she said in the internal documents. These
3 are not documents that they turn over to the EPA, just like the
4 Parry report. They didn't give the Parry report to the EPA
5 when Parry said that it is genotoxic.

6 She said: We cannot say it is not a carcinogen. They
7 haven't done the testing.

8 Now, he talked about there was all these tests, hundreds
9 of tests. We have to look at what those tests actually were.

10 Those tests, Ladies and Gentlemen -- if I can find my
11 thing here -- those tests Dr. Farmer was asked about them. Are
12 these acute toxicology tests? Well, first of all, do they test
13 for cancer?

14 Answer: No.

15 That's what she said on the stand.

16 Question: Potential cancer causing of any substance?

17 Answer: No.

18 They answered the request for admissions. You saw them.
19 They admitted that they didn't test the formulated product. So
20 for him to stand up here and say, Oh, there are hundreds of
21 tests, that's not what they admitted to. That's not what the
22 Defendant admitted to.

23 Now, conspiracy. I never said the word "conspiracy," and
24 you know that. But I will say that their behavior since 1975
25 has been reckless, time and time and time again.

1 Going back to the EPA when it was first approved, you had
2 the IBT scandal. When that study was held invalid, they didn't
3 do the right thing. They didn't take it off the market. They
4 didn't put a warning on it. When the EPA said it was a Class C
5 oncogen, what did they -- how did they respond to it? They
6 didn't say, Let's warn it is a Class C oncogen. They said, We
7 have to find a tumor in the control group. And, lo and behold,
8 they did; and that changed the history, their relationship with
9 the EPA because the EPA changed their categorization after
10 that.

11 Now, this labeling issue, make no mistake about it. It is
12 the Defendant's responsibility. It is Monsanto's
13 responsibility on the label. It is their responsibility to
14 warn that their product causes cancer. They cannot hide behind
15 the EPA as a shield like they are doing in front of you now.

16 The instructions. Let's look at the instructions because
17 he made an issue about what would this label even say. When
18 would this label have gone on the product? Well, the label
19 should have gone on the product when they first knew or should
20 have known that it caused cancer. Remember, one of the first
21 studies was 1980. The first mouse study showing lymphoma was
22 1983, well before Mr. Hardeman ever sprayed.

23 So Mr. Hardeman, I asked him: If the bottle had said
24 Warning, it causes cancer, would you have bought it?

25 He said: No.

1 So on the instructions -- and you have to kind of look at
2 the instructions and the verdict form together. The verdict
3 form is what you fill out and then return, but the instruction
4 gives you guidance. So the first question -- and you remember
5 what we asked is that all six of you -- all six of you -- vote
6 yes to all three questions.

7 Number 1 goes back to Number 11 in the instructions. All
8 right. It says it right here for you, but that's strict
9 liability design defect. And it says very clearly -- and this
10 is why we believe that the answer is yes, Ladies and Gentlemen:
11 To establish its design defect claim, Mr. Hardeman must prove
12 all of the following: Monsanto manufactured, distributed or
13 sold Roundup.

14 That is not in dispute, okay. It's their product. So
15 that's Number 1.

16 Number 2, Roundup, in the context of the facts and
17 circumstances of this particular case, is a product about which
18 an ordinary consumer can form reasonable minimum safety
19 expectations.

20 You can buy it off the shelf at your local hardware store.
21 Your minimum safety expectation is it wouldn't cause cancer.

22 That Roundup used by Mr. Hardeman did not perform as
23 safely as an ordinary consumer would have expected.

24 I asked him: Did you expect cancer? Did you think it was
25 dangerous?

1 No.

2 And that Roundup's failure to perform safely was a
3 substantial factor in causing his harm.

4 You already found that Roundup caused his harm, and the
5 fact that it failed to perform safely, and that's in
6 Exhibit 442. It talks about it is not glyphosate. It is the
7 actual formulation that does the damage. The formulation does
8 the damage. The formulation is Roundup. And that's why we ask
9 that you check yes to Question Number 1. It is a defective
10 design. It does not work as an ordinary consumer would expect
11 it to work.

12 All right. Number 12, let me take my cheat sheets off
13 here -- Number 12, that goes with Question Number 2 on the
14 verdict form. And this is about failure to warn.

15 Number 1, Monsanto manufactured, distributed or sold
16 Roundup.

17 That is a yes.

18 Roundup's NHL risk was known or knowable in light of the
19 scientific medical knowledge.

20 Remember that's the blow-up. The scientific knowledge.
21 It was generally accepted in the scientific community at the
22 time Mr. Hardeman was using it? From 1975 to 2012? There is
23 your scientific community. That's what they knew.

24 And that the risk of NHL presented a substantial danger
25 when it was used in an intended or reasonably foreseeable way.

1 Remember Dr. Reeves testified that they intended people to use
2 it to kill poison oak. That is exactly how Mr. Hardeman used
3 this product for over 26 years.

4 Ordinary consumers would not have recognized the risk of
5 NHL. People like Mr. Hardeman, they are not going to know that
6 a weed killer causes cancer. That is the Defendant's
7 responsibility to tell them, to warn them.

8 And they have admitted, Ladies and Gentlemen, Number 5,
9 Monsanto failed to adequately warn of the risk of NHL. They
10 admitted they never warned. And when we talk about punitive
11 damages, to this day, they don't warn.

12 Even after IARC says it is a probable carcinogen in 2015,
13 they didn't change their label. They do not warn that it
14 causes cancer. In fact, they have come to this courtroom and
15 they tell you it doesn't.

16 We don't want to disagree with what you say in Phase One,
17 but they do. They say it doesn't cause cancer.

18 And not one person from Monsanto, not one corporate
19 officer, not one representative of that company came and sat
20 with their attorneys at any point in this trial. Not one of
21 them came here to defend the safety of Roundup, not one of
22 them.

23 Back to the instruction, failure to warn. And then it
24 says that that failure to warn was a substantial factor in
25 causing Mr. Hardeman's harm.

1 I have to watch my clock. All right.

2 Number 13, and this goes to the last question -- actually
3 kind of lines up 1, 11; 1, 12 -- 3, 13.

4 So that is negligent failure to warn. And, again, they
5 have admitted they did not warn. This is why we think you
6 should answer yes, because they made the product. They sold
7 it. They knew or reasonably should have known that Roundup
8 posed a risk of NHL when used or misused in a reasonably
9 foreseeable manner, and that Monsanto knew or reasonably should
10 have known that users would not realize the risk. They failed
11 to adequately warn. And that a reasonable manufacturer under
12 the same or similar circumstances would have warned.

13 Absolutely. If you know that your product causes cancer,
14 you should tell the public. You shouldn't do what Donna Farmer
15 says and say, Well, just tell them it doesn't do any damage.
16 That is in her e-mail. That is despicable. That is why --
17 that is one of the reasons why punitive damages is warranted in
18 this case because they have never told the public, and they
19 continue to this day to deny it to the public. But internally,
20 internally, in those internal e-mails -- and he may call them
21 "dumb" only once, but that is what is on the page. And that is
22 what she said. And it is not dumb. It is offensive. It is
23 offensive for her to say, On the one hand we can't say it is
24 not a carcinogen because we haven't tested it, but on the other
25 hand to say, Tell the public it doesn't do any damage. That is

1 offensive.

2 And that is why, when you look at this one, Instruction
3 Number 13, Monsanto's failure to warn about the risk of NHL was
4 a substantial factor.

5 And, Ladies and Gentlemen, when you go through these
6 instructions and you turn to that verdict form, that is why we
7 ask you to check yes. Every single one of you, we need all six
8 of you to check yes for Mr. Hardeman because he has had to sit
9 here and listen to them say, It doesn't cause cancer. There is
10 no evidence. There is no evidence.

11 I mean, are you kidding me? After all this, after
12 everything that has happened since 1975 and everything we have
13 talked about in this trial, that is still their position?

14 Now, I want to talk about this -- the label. I got to say
15 something about that too. And he talked about Mr. Hardeman's
16 deposition. And do you remember that when I came back I asked
17 Mr. Hardeman -- because there were certain pages of his
18 deposition read and there were certain pages not read, and we
19 asked for more pages to be read. This was an eight-hour
20 deposition.

21 And they are standing here today and saying, Well, when
22 did he read the label? When did he not read the label?

23 Ladies and Gentlemen, they have already admitted they
24 didn't put a warning on the label. He testified that he looked
25 at the label. He read the label. You know why? One of the

1 reasons he looked at the label is because he had to know how to
2 use the product. This was concentrate. Remember, he was
3 mixing it. He told you on the stand he absolutely looked at
4 the label.

5 Now, they are going to nit-pick him and say, Well, did you
6 look at in 1988? Did you look at in 2000? Did you look at in
7 2005? Did you look at it -- I mean, come on. Mr. Hardeman
8 testified he read the label. And they have admitted they
9 didn't warn him.

10 And they can ask him over and over and over again in an
11 eight-hour deposition Was it one time? Was it two times? Was
12 it four times? But Mr. Hardeman testified he read it.

13 And most importantly he testified if they had put on the
14 label that it causes cancer, that they had warned about that
15 risk, he wouldn't have used it and we wouldn't be here today.

16 Ladies and Gentlemen, I ask that on behalf of Mr. Hardeman
17 that when you go back there and you consider the damages in
18 this case and you consider what he has been through and how it
19 was completely unnecessary if they had just told the public it
20 causes cancer, we ask you to consider that when you make your
21 decision about the damages, about his past suffering, his
22 future suffering, because Mr. Hardeman is going to have to live
23 with this for the rest of his life.

24 This trial will end. This trial will end. But
25 Mr. Hardeman's anxiety, his anguish, his worry about if he will

1 get cancer, that will not end. That will not end for the rest
2 of his life. And we ask you to compensate him for that.

3 And we ask you to tell this company -- and you send this
4 message loud and clear because they have not heard it from
5 anyone so far -- that you send a message loud and clear that no
6 more. You have to be responsible. You have to say, If you are
7 going to put a product on the shelf, you have got to tell
8 people that it causes cancer when you know or should have
9 known. You have got to warn. No more business as usual at
10 Monsanto.

11 You need to send that message loud and clear, Ladies and
12 Gentlemen.

13 Thank you, Your Honor.

14 **THE COURT:** Ms. Moore.

15 Okay. Ladies and gentlemen of the jury, the case is
16 yours. We will send you back to the jury room, and you can
17 begin your deliberations. Thank you very much.

18 (Jury beginning deliberations at 11:56 a.m.)

19 (Proceedings were heard out of presence of the jury:)

20 **THE COURT:** Okay. My understanding is that the jury
21 will not be given lunch in the jury room today. So they may be
22 going down to the cafeteria so I'm going to apply the usual
23 rule right now of requiring everybody to stay in the courtroom.
24 Feel free to take a seat, but please stay in the courtroom for
25 five minutes.

1 And is there anything to discuss?

2 MR. STEKLOFF: Not from us, Your Honor.

3 THE COURT: Okay.

4 MS. MOORE: I don't think so, Your Honor.

5 THE COURT: So everybody is a prisoner -- you're all
6 prisoners for five minutes and stay in the building.

7 MS. WAGSTAFF: I have a question, Your Honor.

8 THE COURT: Yes.

9 MS. WAGSTAFF: What's the -- are the time limits for
10 deliberations the same as in Phase I, they're going to stay
11 till 4:00 p.m. and deliberate and then you've given them the
12 option on Thursday or --

13 THE COURT: Oh, I don't know. Yeah, it's whatever
14 they --

15 MS. WAGSTAFF: The same as --

16 THE COURT: It's whatever they would want.

17 MS. WAGSTAFF: Okay.

18 THE COURT: So presumably they will be back there
19 discussing that and deciding how long they want to deliberate.
20 If they pass anything along to Kristen, we'll let you know.

21 MS. WAGSTAFF: Okay.

22 MS. MOORE: Thank you, Your Honor.

23 MS. WAGSTAFF: That will be great. Thank you.

24 THE COURT: But while they're deliberating, stay in
25 the building.

1 **MS. MOORE:** Right. We understand. Thank you,
2 Your Honor.

3 **MR. BRAKE:** And, Your Honor, I know the last thing
4 that you want to think about right now is doing this all over
5 again.

6 **THE COURT:** Oh, no. We decided -- you want a trial
7 date?

8 **MR. BRAKE:** Yes, sir.

9 **THE COURT:** We decided -- I mean, I will say that I
10 want to have -- now is not necessarily the time to do it, but I
11 do want to have a conversation with all the parties, including
12 you, about whether after this trial, given that we had, you
13 know, the trial last year and we have the trial going on in
14 Alameda and we've had this trial, I do want all of us to have a
15 discussion about whether the focus should shift to mediation or
16 something like that.

17 **MR. BRAKE:** Understood.

18 **THE COURT:** But assuming we go forward with your
19 trial, we came up with a date. I think it was May 20th; is
20 that right?

21 **MR. BRAKE:** Well, that's the reason I'm persisting in
22 this, is that I don't really have anything firm on my calendar
23 that I feel --

24 **THE COURT:** Sorry?

25 **MR. BRAKE:** I don't have anything on my calendar that

1 I feel comfortable with.

2 **THE COURT:** May 20th. May 20th.

3 **MR. BRAKE:** May 20th?

4 **THE COURT:** Yes.

5 **MR. BRAKE:** Okay. So that's going to be subject to
6 further discussion?

7 **THE COURT:** Yeah. You should operate on the
8 assumption now that you're going to trial on May 20th; but,
9 yeah, I want to have a further discussion with the parties
10 about that after this case is entirely over.

11 **MR. BRAKE:** Great. Thank you.

12 **THE COURT:** Thank you.

13 **MS. WAGSTAFF:** Thank you, Your Honor.

14 (Luncheon recess taken at 11:59 a.m.)

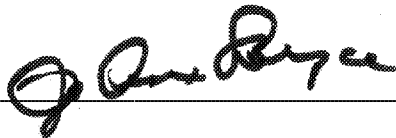
15 (Jury left for the day at 3:06 p.m.)

16 ---oOo---

CERTIFICATE OF REPORTERS

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

DATE: Tuesday, March 26, 2019

A handwritten signature in cursive script, appearing to read "Jo Ann Bryce", written over a horizontal line.

Jo Ann Bryce, CSR No. 3321, RMR, CRR, FCRR
U.S. Court Reporter

A handwritten signature in cursive script, appearing to read "Marla F. Knox", written over a horizontal line.

Marla F. Knox, RPR, CRR
U.S. Court Reporter